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Book H67

A

HISTORY

OF

THE PROCEEDINGS

AND EXTRAORDINARY MEASURES

OF THE

LEGISLATURE OF MAINE,

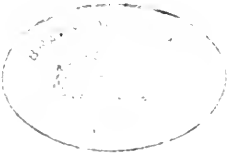
FOR THE YEAR

1830.

WITH THE SEVERAL OPINIONS OF THE JUSTICES OF THE SUPREME COURT ON THE QUESTIONS SUBMITTED TO THEIR DECISION BY THE SENATE AND THE GOVERNOR.

Portland.

1830.



INTRODUCTION.

THE candid and unprejudiced every where concur in pronouncing the leading measures of the Legislature of Maine, for the year 1830, to be EXTRAORDINARY and UNPRECEDENTED. And few citizens, of the class mentioned, are so sanguine and clear in their convictions of the character of those measures, as not to doubt more or less in regard both to their constitutionality, and the expediency of them *under the circumstances that existed.*

That they were party measures entirely, none presume to deny. Nor is it a subject of dispute to which party they belong. And hence, if there be aught of honor or praise in them, their authors and advocates, individually, and, as a party, will of a certainty have it ascribed to themselves exclusively, by a discriminating and well informed people, and the opposing party will struggle in vain, should they attempt to share it. So on the other hand, it is hardly less certain, that if these singular proceedings carry in them aught of dishonor to the State, or other cause of censure, those who originated and those who advocate them must inevitably endure all such dishonor or censure, before the same impartial tri-

bunal, and in turn will labor without effect in any attempt they shall make, either to disburthen themselves of the odium, or to darken by reproach the triumph of their opposers. The only remnant of honor left within their reach in such case, will consist in an early renunciation of the errors, and in an open secession from the party that attempts to justify them.

What is proposed in the ensuing pages, is a succinct and unvarnished history of the rise, character, progress and termination of those prominent proceedings, to which we have alluded. We hope to represent them in a spirit of candor, and with a strict regard to TRUTH. To say we have not made up an opinion on them ourselves, would be to confess our incompetency to write their history. To our opinion, however, we sacrifice nothing which can be of any avail to the opinion of any other man—nor for its sake, is "aught set down in malice."

MAY, 1830.

HISTORY.

CHAPTER I.

History and Character of the two Parties in Maine.

It is quite impossible to arrive at a correct knowledge of the character of the men and measures that mark with peculiar distinction any particular period, without recurring to such antecedent facts and circumstances as have a bearing upon their history. This being so obviously true, an apology will not be required by the reflecting reader, for our glancing slightly at the past history of parties under our national and State Governments, in the first chapters of this work.

It is an incontrovertible fact, that two parties have existed at all times in name and appearance, if not in principle, since the adoption of the federal constitution, in every New England State at least.

As late as the war of 1812,* it was not denied that each of these primitive parties had preserved its identity in all particulars, with the exception of an occasional detachment of a man here and there, first from this party and now from that, to join the adverse party. Such unfrequent changes of individual members, whether sincere or only speculative, never produced more than a local, and at best but a temporary effect upon the great body of either party. And hence they never were regarded as altering at all the IDENTITY of either. From the very

* War was declared 18th June, 1812.

character of the human mind and heart, it always has been the case, and always will be in the future as at present, that in politics as in religion more or less converts may be found attached to each party, seceded from the ranks of the other party—some from one motive, and others from different motives. No man, unless he deceives himself, or intends to deceive others, argues from such individual changes, that the other party no longer exists.

When the war ended,* neither party acknowledged itself extinguished, nor even defeated. It was but just antecedent to this period, that the party opposed to the war, (universally recognised as the *federal party* from the days of the elder Adams until then,) was about adopting the most daring and energetic measures† ever resorted to under the government—and this in a consciousness of their fulness and vigor to execute them. These were abandoned afterwards, not under any *acknowledged* sense of the party's weakness, but under the pretence that peace with Great Britain had rendered them unnecessary.

1815.

On the other hand, the Republican party was, during the whole period of the war, proclaiming its UNITY and INDIVISIBILITY in high notes of exultation, in the splendid victories it was almost daily obtaining over both the enemies of the government without, and the enemies of the national administration within. These victories were consummated, and the domination of this party made complete, by the Treaty of Peace with Great Britain, which foiled the bold projects had in contemplation by the federal party. But, as already intimated, the latter claimed a victory over republicans, instead of acknowledging a defeat, in the Treaty of Peace; so that each party was then not only existing, but boasting of its successes.

It was not until some time after the Treaty of Peace, that the members of the federal party [called since by some, "the peace party in war, and war party in peace"] began to feel disheartened under their successive discomfitures, now greatly aggravated by more gloomy prospects. The first election of Mr. Monroe,

1818.

* The Treaty of Peace was ratified by our government on the 18th Feb. 1815.
† The Hartford Convention was assembled 15th Dec. 1814.

who was brought forward by the republican party to succeed Mr. Madison in the Presidency, sat like an incubus upon their desires. It was soon after that they ceased almost entirely in every State, to display an open and organized opposition to their successful rivals. This submission, however, was never considered nor designed, for more than a tacit acknowledgment of a temporary defeat. Being confessedly too weak, as a party, to overthrow the principles and policy of their opponents, and without the prospect of gaining strength by persisting in a course of violent opposition, it was on this principle they ceased to act *as a party*. Being furthermore, honestly mistaken perhaps in some instances, and in others most obviously too determined in their hostility towards the principles, policy, and the men, who were arrayed in triumph against them, to fall into their support, they also ceased pretty generally to act politically as individuals, in regard to passing events. They consequently became without ostentation or concert, what have since, ostentatiously and *by concert*, been denominated "*no party men.*" And for the most part, the pursuit of public office and public employment was abandoned by them in despair, for the less precarious business of their respective professions in private life.

The members of the Republican party in the mean time, reaped the rewards of their many patriotic efforts. They were in the almost quiet possession of the government—with all its offices and patronage at their disposal.

But without an organized opposition, party animosity naturally subsided very soon. An era of political quietude between the old parties ensued. This afforded too good an opportunity for the invention and growth of local interests, private speculations and personal preferences. And these, in the absence of great disputed principles and measures of national concern, though less boisterous, are no less effectual to divide a people. They did multiply accordingly in number, and grew as rapidly in importance. And by the time when a successor to Mr. Monroe began to be talked of, old party distinctions seemed verily to be quite buried and forgotten, amid the many new collisions of the people upon the different subjects just adverted to.

1820.

Many men of intelligence* and foresight from the old federal party, though politically dormant themselves, saw and watched the operation of these new differences with secret exultation. They perceived but too correctly, that while it could not eradicate the spirit and principles of their former partizans, it nevertheless was well calculated to work out an oblivious cure for the manifold transgressions of their old party, and thus to enable the members of that party, now generally excluded from public office and political influence, to come again upon the political arena, and with an even chance to reinstate themselves in power, and to reestablish those arbitrary principles and measures,† that so strongly mark their history during the administration of the *elder* Adams. They had too much discretion, however, to make public these views and feelings, by offering so soon a candidate as their own, to succeed Mr. Monroe. In other words, they knew that an avowed *federal* candidate could not succeed, even though ten years had nearly elapsed since the war, and a multitude of minor differences had helped to divide the republican party. It would probably have aroused the suspicions of these last universally, had the former done so, and reunited them at once against those whom they had long been accustomed to regard as a common enemy in politics. As it was, some of the more observant of the old republican party were well satisfied of the game that was playing in secret by the ex-leaders of the "peace party in war," and they sounded the alarm. Yet there could not be positive or tangible proof of the justness of their fears, sufficient to excite the main body of their old party to watchfulness, lost as they were in their new divisions.

1822.

Although the interest of the late federal party in the election of a successor to Mr. Monroe, was, and appeared then susceptible of being made in adroit hands, what we have described, it was impracticable, nevertheless, without jeopardizing the secrecy with which

1823.

* The federal party throughout all times have laid claim to all the virtue and intelligence of the country. But this is presumptuous and overbearing. Nevertheless it is true, that party embodied a fair proportion of both virtue and intelligence.

† The Alien Law, Sedition Law, or "Gag Act"—Standing Army Bill—Midnight Judges' Appointments, &c. &c.

the information must be communicated, to make all the scattered members of that party fully understand it, in season to reunite and rally them around one and the same candidate. The reader will observe, that they had now been for some time loosened from their party discipline, and become, as it were, like the Jewish nation, a scattered people in the political world. But, like the Jews again, they were tenacious of their party principles and prejudices, and had not been, as individuals, in hardly any degree divested of them. It was not until *after* it had become with them a matter of *policy* to keep up no longer a retreating fire, that any one of their number, either high or low, officer or subaltern, could be found at all reluctant, though no longer a professed party man, in defending and justifying still every act of his old party, from the Hartford Convention back to the first burning of President JEFFERSON in effigy. Neither reproach, nor the remembrance of repeated defeats, could put them down, as individuals, on any of those points, though such weapons had long since been sufficiently powerful to discourage them as a party. This shows how deeply and immoveably rooted were their principles, prejudices, and hatred. A new line of policy, however, subsequently* grew into vogue among them upon this subject, as will be seen hereafter.

CHAPTER II.

History and Character of the two Political Parties in Maine—Continued.

No less than five candidates,† to succeed Mr. Monroe in the Presidency, were brought forward by the different interests into which the people had unfortunately become divided under his pacific administration. It may be remarked, that this diversity of sentiment was but the natural effect of the political quietude into which

1823.

* In 1828. See page 13.

† John Q. Adams, Andrew Jackson, William H. Crawford, John C. Calhoun, & Henry Clay.

the two old parties had in turn fallen—the one from its intolerable adversity, and the other from its great carelessness, originating in an excess of easy circumstances.—But this difference of opinion was quite pleasing to the long-sighted members of the former, for reasons already mentioned. They saw in it the ingredients of a political whirlwind, into which they calculated thereafter to throw themselves and friends, that through it they might all come up in a re-embodied shape, to ride upon and direct the storm.

The great exultation with which they, in particular, hailed the subsequent election of J. Q. Adams to the Presidency, fully exemplified the opinion here advanced. They toasted it in sentiments which developed their *past* calculations, as well as their supposed future prospects. Those who fell with the first Adams,* were immediately proclaimed as the regular candidates for promotion under the second Adams. The federal party fell with the first Adams.

It was time for it, and the jealousy of old republicans began indeed now to take a start. But not to anticipate the history of the second canvass that followed Mr. Monroe's retirement from office, it is proper we should dwell a few moments longer on the first.

During the whole of the presidential canvass of 1823 and '4, neither of the five candidates was publicly recommended on old party principles exclusively, except by a few of the old republicans in New England, who advocated the election of Mr. Crawford. Nor did either of the old parties reunite its members generally, in support of either candidate. As has been well remarked by another, the times in this respect were completely out of joint. More or less of both the old parties rallied under the banner of each candidate. The *chief* men of the federal party, however, among whom concert was easy and confidence secure, united pretty generally in support of one and the same candidate—Mr. J. Q.

1824.

* On the celebration of Mr. Adams's election, a *royal* salute of 100 guns, was fired in Boston, at morning, noon and night, as was done in Paris on the restoration of the Bourbons, to the throne of France. A grand entertainment was given, at which Josiah Quincy, the cousin of Mr. Adams and the perpetual enemy of the republican party, presided, and gave the following toast, which was received with enthusiasm, and copied into all the federal prints in the country, to wit:—"THE POLITICAL REGENERATION: *Those who* FELL *with the* FIRST *Adams* RISE *with the* SECOND."

Adams; but they did this, perhaps, as much upon trust, as from any positive assurance, *at that time*, of favor. We think, however, that it may be ascribed mainly to the difficulty of effecting in secrecy a more general understanding among their dormant brethren, that the whole of them did not unite for one and the same candidate then, as was nearly the case in the succeeding canvass.* And we think, too, that it may be in the main ascribed to this lack of general re-union of the federalists, that the old republicans did not also in turn re-unite more generally, in the support of some particular one of the candidates. That any ground at all has been obtained for the idea, that there is no longer any republican or any federal party, is surely to be ascribed entirely to this temporary estrangement of the members of each party, from one another. When the reader shall have carefully studied subsequent events, and the political characters of men engaged in them, he will clearly perceive the correctness of the opinion here advanced. Party spirit may indeed be deprecated—but it will prevail nevertheless. Men will honestly differ in judgment, throughout all generations, upon principles of government, as also on questions of expediency. Parties are the inevitable consequences. The old parties in this country were divided from the commencement upon the great fundamental principles of human government. And these being perpetual, will be the sources of perpetual differences of opinion. And it may be relied on with confidence, that where two parties set off against each other upon such irreconcileable views, under any form of government whatever, there will be no end to those parties, until there shall come an end to that government.

It would be easy to show the widely different political views and principles that have at all times influenced these opposite parties. It would be easy, did we not want room, to detail evidence of the spirit of aristocracy with which the one was imbued, and by which it has been at all times governed, even "*to the present time*;"†—and, on the other hand, the democratic and liberal feelings that have characterised the other party no less constantly. We must, however, for these things, re-

* See page 11.

† See note to page 11, which carries this remark forward in all its force to 1820 and '21, at least.

fer the reader to the writings of the pioneers and leaders of the two parties, beginning back as far as the earliest confederacy of the original thirteen States.

Having briefly presented what was the true aspect of politics in 1824, and from what causes and to what extent the old parties were then dormant, and the members of them indiscriminately amalgamated, we come properly to consider next, the history of the presidential campaign that followed.

The moment Mr. Adams was elected,* and had in his first Message to Congress proclaimed the princi-
1825. ples and policy† that would govern his administration, the chief men of the federal party seemed one and all to feel a thrilling response of exultation and joy, and to demean themselves as if already securely seated once more in influence over the public mind, through the new President. The sentiment, so full of good tidings to the one side, and so full of alarm to republicans, was fearlessly proclaimed,—that those who fell with the *first* Adams were now to rise with the *second* Adams! It did not take long for this proclamation, though full of meaning, to be fully understood by those for whom it was intended. Proceeding from the bosom friend of Mr. Adams, it was supposed to be not only a safe prophecy, but the result of positive assurance and knowledge. Nor was it long before every surviving member of the memorable Hartford Convention was aroused by it, and, girded by his political armor, rallied under the banner of Mr. Adams' party. These, too, drew in their old political friends both far and near, almost to a man, whose friends in turn were also drawn in with like exactness, until it was but too obvious that nearly the whole‡ force of the old federal party was in the field, completely resuscitated, and re-embodied, and strengthened by numbers of their ancient rivals, who unluckily found themselves committed

* Mr. Adams's election by the House of Representatives, Feb. 9, 1825.

† For the character of Mr. A's. principles and policy, as depicted by his supporters, see note on page 14.

‡ "*Every member*" of the federal party was rallied, according to the statement of the federalists of Philadelphia.

§There is good cause for believing, that Mr. Webster of Massachusetts received a letter about this time, which he and other federalists considered as a pledge on the part of Mr. Adams, to bestow offices on the federal party. Mr. W. was charged afterwards with having shown it to Mr. McLane, of Delaware, Mr. Hopkinson, and Mr. Walsh, of Philadelphia, Mr. Warfield, of Maryland, Mr. Stockton, of New Jersey, Mr. Van Rensselaer, of New York, and other influential members of the old federal party. Neither Mr. W. nor any of the other gentlemen named, has at any time contradicted the assertion.

too deeply in the support of the federal candidate to retract with credit or seeming consistency.

These strong indications of old party feelings among federalists, flattered, as they appeared to be, by the sentiments and policy avowed by the President,* could not but give an early alarm to the watchful members of the old republican party. This alarm was soon sounded, and not now without effect. Most of the leading republicans—perhaps we might safely say *all* of them, who had supported, without reference to party distinctions, either Mr. Jackson, Crawford, Calhoun, or Clay, during the former canvass, began to rally and reunite against Mr. Adams and his supporters. Mr Crawford's health being such as to prevent his being any longer a candidate, and Mr. Calhoun and Mr. Clay having both withdrawn from the field, the republican party at length settled down into a cordial and undivided support of Gen. Jackson. This brought together, on the one side, very nearly the same men, who had on former occasions struggled shoulder to shoulder under the banner of the republican party: and, on the other side, very nearly all of their ancient opposers were seen cemented again into an organized and well disciplined party. Of course, the latter were regarded by the former as the true federal party. The ignominy of the measures of that party in former days were therefore recalled and fastened upon them:—the past conduct of its members was arraigned anew, and their political heresies and arbitrary principles exposed again for popular execration. The influence brought in this way to bear against the supporters of Mr. Adams in New England, was felt by them to be dangerous to their success, if not well merited. They consequently soon shrunk from the detail of past events and measures, and *now* began to disclaim† the name of *federalist*, without assuming any other distinction than that of the

1825.

1828.

* The following sentiment contained in Mr. Adams's first message, was appalling to the advocates of limited powers in Congress, but no less congenial to the views of the federal party:—

"While Europe, in many parts, less blessed with that freedom which is power, than we are, are advancing with gigantic strides in the career of public improvement, were we to slumber in indolence, fold up our arms, and proclaim to the world that we are *palsied by the will of our constituents*, would it not be to cast away the bounties of Providence, and doom ourselves to perpetual inferiority."

† This remark is to be confined to New England federalists. Out of New England, where the federal party happened to have the ascendency, they pro- See note on next page.

friends of Mr. Adams." They objected to being denominated the *federal party*. They pointed to those of their fellows, who had on former occasions acted in the ranks of the republican party, as evidences that theirs could not be the federal party *now*. But these were so few, and the number of old federalists among them was so large: and, on the other side, the number of old federalists was so small, and the number of old republicans so large, that the identity of the old republican party could scarcely be torn from the latter, nor that of the old federal party concealed in the former. As in all other times, a few men who had exchanged sides might be found in each party, and this was the most that could be said. These could not alter the character of the main body of either, each being too distinctly seen in the character of the respective leaders, to be mistaken by even the ordinary observer of men or measures. The two old parties were to all intents and purposes revived, and in array against each other. And, as in former times, while the inclinations of the one party tended to arbitrary power, as manifested in the constructions* put on the Constitution by the President and his adherents, and in other particulars which might be named:—the endeavors of the other were directed to the support of wider privileges and greater freedom in the people, and for delegating less power to the government, as well as otherwise to the propagation of democratic principles and measures. The contest upon these differences waxed warm under a

* T[illegible] regard [illegible] M[illegible] A[illegible] & [illegible] W[illegible] this—At [illegible] J[illegible] Congress from the District of Phila[illegible] O[illegible] M[illegible] A[illegible] viz.—"The men [illegible] FEDERALISTS—[illegible] pursued THE GREAT SYSTEM OF NATIONAL POLICY [illegible] PRESENT TIME. T[illegible] f[illegible] It is the system that has for years [illegible] now exerts [illegible] proper blessings [illegible] our country. [illegible] administration [illegible] republican. ITS POLICY IS ESSENTIALLY FEDERAL. [illegible] *leader of a party*, so often slandered [illegible] much [illegible] proud satisfaction of seeing the [illegible] of Washington [illegible] *H*[illegible] *governing the United States.* T[illegible]—[illegible] is addressed."

variety of shapes and measures. As all at this day are informed, it resulted in 1828, in the complete defeat of Mr. Adams and the federal party, and in the as complete triumph of the republican party, through the election of General JACKSON to the Presidency.

Such was the power and violence of this last mentioned canvass, that all other political subjects and discussions were absorbed in it, or received their tone from it, whether of a national, or of a sectional and State character only—dividing the people into two parties upon the latter, precisely as they were divided upon the former. State politics were from beginning to end made to turn upon it, in every State. And in New England, not only the State elections, but even the choice of nearly every town officer was influenced more or less, if not controlled altogether by it, as the one or the other of the belligerent parties on the main question chanced to be predominant in these smaller circles. In every State Legislature most especially, were the lines distinctly drawn between the friends of the two great national parties. So that to understand fully the *history* and *character* of parties in any State, the reader needs only to keep before him the history and character of the parties in the nation.

These parties, which we must now be justified fully in denominating the republican and federal parties. (their original distinctions) were about two federalists, to one republican in the Legislature of Maine in 1829. To make up this great disproportion, it will at once occur to the reader, conversant with the past politics of the State, that all the members of the party, having the ascendancy in this Legislature, had not always been of the federal party. In the minority, or republican party, however, all, we believe, or nearly all, were republicans from their earliest days. So that besides in principle, this party was also in men, strictly republican. Those of the other party who had not been federalists at all times, were such as had been drawn into the support of Mr. Adams in the quietude of 1823 and '4, already noticed, when local and personal, and not party feelings prevailed: and who did not feel themselves warranted, after the part they had taken for him, to forsake him, though it could not but be palpable to them *now*, that he was in reality the *federal* candidate. A few thus entrapped, did, very much to

1829.

their credit, return to their former friends and party notwithstanding the support they had given Mr. A. at his first election,—ere resuscitated federalism had so boldly avowed itself.

CHAPTER III.

The Legislature of 1829.—*Republican and Federal nominations for the office of Governor.—The Canvass and its result.*

BEFORE the meeting of the Legislature in 1829, the triumph of republicans through the nation, in the election of General JACKSON, was known and re-echoed through the State. His friends being in point of numbers the minority in Maine, appreciated that triumph with greater manifestations of joy than they otherwise might have done, which had the effect of irritating, perhaps somewhat more severely, the feelings of their defeated opponents. These last, one and all, whether always, or never before the adherents of the federal party, appeared thereupon resolved in anger, that their victors in national politics—the republican party, should feel for once the power of vengeance. It was through the advantage of their strong ascendancy in numbers, that the federal party felt secure in adopting such a proscriptive resolution. In accordance with it, about every* officer in, or attached to, the Legislature, who was known to be republican, was either turned from his office or superseded, as soon as that body came together. And where they had not the power to reach their opponents by removals, they were diligent and prompt to enact such laws as would cut off from office,† and weaken in influence, all who were obnoxious to them in politics. However, the lustre and influence of national politics, which seemed now to be daily increasing for their opponents,

1829.

*The Speaker of the House, President of the Senate, and Door-keeper of that Branch, the Secretary of State, Treasurer of State, and Councillors, for the year 1828, were severally turned from office, and members of the federal party put in their places, by the Legislature. The new Council in their turn also refused invariably to confirm any nomination of a republican for office, but confirmed every one nominated from the federal party.

†By reducing salaries and the incidental perquisites of office.

so completely eclipsed their prospects of continued power, before the session was ended, as to give them in the contrast the positive appearance of being irrecoverably on the wane. To keep up some more definite object of common interest among them, than that of opposing thus early the new national administration, the federal party in the Legislature concluded on nominating, upon their own responsibility, a candidate for the office of Governor.* From the "signs of the times" it was apparent to the discerning men of their party, who were most prominent for the office, that ere another year should come round they might be in a minority, notwithstanding their present strength and numbers. These were consequently solicited in vain, each in turn, to consent to be considered the candidate of that party. Not one of them could be persuaded to risk his reputation upon the result of the ensuing election. After various efforts, they finally reached one, Mr. Huntoon—who felt too much flattered by the unexpected and to him inexplicable proposition, to hesitate for the answer he should give. He consented at once to become their candidate. The effect which his nomination had upon the public mind, when first announced, was quite amusing. Who Mr. Huntoon was, seemed to be an inquiry made no less frequently by the members of the party in whose name he had been nominated, than by republicans themselves. All were equally ignorant of him—and he in turn was as ignorant of them. Had he been one of the *Foulahs*, of the *Feloops*, of the *Mandingoes*, or of any other tribe in West Africa, hardly less inquiry could have been necessary to make him known to the people. His immediate friends, however, first recommended him as a Lawyer. But it was soon ascertained, that there was nothing to boast of in his career as a Lawyer. In short, he had never been known to argue a cause, however simple, before even a Justice of the Peace! But he was next represented as a Farmer,—to catch the support of that extensive and respectable denomination of the community. Inquiry, however, soon exposed this deception also. He had neither in theory nor in practice, any pretension to that honorable appellation. His election was then urged upon the late

*Gov. Lincoln had declined a re-election before the federal party began to show their hand, or he probably would have consented to be run again.

adherents of Mr. Adams, on the ground of his having been one of their party, and that it must be effected at all hazards to perpetuate their ascendancy in the State! Here the worst of passions were addressed. Men, principle, the safety of our institutions, and the honor of the people, were all asked as a sacrifice to party spirit and party purposes, and a large portion of the people called upon to fill the first office under their government, by giving their votes to a man, whose perfect insignificance, obscurity, and want of capacity, had until then conspired to prevent them from ever before hearing his name pronounced, or his existence mentioned! The declining fortunes of federalists, and of the few old republicans now connected with them in the manner already detailed, could not but be apparent in such desperation. No event, to be sure, since the election of electors in November preceding, (when the federal party in Maine counted about two, to one opponent,) could show mathematically or in numbers that they were decreasing. But there was a feeling pervading the people—a re-action upon national politics in favor of the "Military Chieftain," caused by the strong majority in the nation that had declared in his favor, which struck discouragement home to the bosom of almost all opposed to him, and impressed them with a proper sense of their impotency. The idea that they were, nevertheless, a majority in the State, was not enough to outweigh this insignificance of their party in a national view. This conviction sat upon them heavy, and disheartened them more and more, daily. And although they could not see in numbers the constant decrease of their party, yet they felt it sensibly, and, what was worse, they felt that it must continue to decrease until the end of President Jackson's administration, unless some signal blunder, or unexpected act of violence on his part, should occur to check his great popularity.

These considerations, founded in reason and the nature of things, warned those who were most interested, to be active, and even desperate, in their endeavors to keep their party together. From the great disproportion of their number, to the number of the republican party, it was their calculation that, with all their losses and the inevitable falling off of men, they should be able still to retain the State government in their hands at least one

year. And, perhaps, by managing prudently the influence and patronage of the various offices that would be at their disposal, in case of success, they might be able to protract their ascendancy even longer. Events have been so strangely controlled as to make good the first part of these calculations; though it is now quite apparent, that neither prudence, influence, nor the patronage they bestow, can fulfil the rest.

The republican party in the legislature, were not in the mean time, less sensible of the prospects opening and growing daily for them in State politics, than they were rejoiced at the success of their labors upon a broader scale. They, however, took it upon themselves to do no more, by way of selecting a candidate for the office of Governor after Governor Lincoln had declined a re-election, than to recommend to the people a STATE CONVENTION, to be holden at Augusta on the tenth of June. This was unquestionably the most republican method of selecting a candidate—it was virtually leaving to the people the business that belonged to them, and which came not within the province of their representatives in the legislature. A Convention* was accordingly assembled, which in point of numbers, respectability and popular confidence, was not surpassed by any that had preceded it, since the separation of the State from Massachusetts. This Convention, after one ballot, unanimously agreed on the nomination of Hon. SAMUEL E. SMITH, of Wiscasset,—a man of high literary and scientific attainments, of gentlemanly deportment, mild disposition, unsullied reputation, and one who had ever since the organization of the State, retained the highest confidence of the people, by his prompt and impartial discharge of the duties of a Judge of the Court of Common Pleas.—Before his elevation to the bench, he was for several years member of the legislature of Massachusetts, and filled other minor offices—professing and practising at all times the doctrines of the republican party. In the absence of high party excitement, the nomination of such a man would have met with universal approbation, as his election would reflect honor upon the government and

* Each town or district was required to send double the number each town was entitled to send Members to the State Legislature. TWO HUNDRED AND FORTY ONE delegates

people of any State. As it was, nothing could be urged against his election, except his being of the republican party, and not opposed to the national administration.

The electioneering canvass was conducted on both sides with spirit and untiring perseverance. Sundry charges of quite a serious nature, adduced against the moral character of Mr. Huntoon, incurred while he was yet an obscure individual, helped very much to aggravate the excitement. Whether true or false, it was apparent that those who brought them before the public, honestly believed them to be true—as they fearlessly challenged Mr. Huntoon* to an investigation of them before the Grand Jury, sitting about that time in Augusta, near his own residence; the decision of which might have brought a criminal prosecution against the authors to a close before the election, and thereby tested the guilt or innocence of the accused, in the presence of the people.† Mr. H., however, concluded rather to rely on the violence of the times for success, than to stir any points in his own character, upon which his opposers had proposed to let the election through the State turn. He, or his partizans for him, had discretion enough to perceive, that nothing short of an era of disjointed circumstances, or a political convulsion, could have brought *him* thus prominently before the public, and that recourse to the ordinary means of support or defence, would be sure to destroy or to allay the commotion which of itself must either make, or break forever, his political fortunes. He was like a body that had been forced up by a whirlwind, and now compelled to ride upon it, or to fall from its elevation back into its primitive obscurity. If we regard his temporary success only, which was all that his partizans cared for, perhaps his silence touching the charges against him was advisable. But most men desirous of a permanent reputation, if innocent of crime, would turn

*He spells his name Hunton, but pronounces it, we learn, as his family have for the most part always spelled it—Hun*t*oon.

†The charges against Mr. Huntoon drove his partizans almost to madness. One Mrs. Delia Bodge, a sister of Mr. H's first wife, at the request of some one, gave her deposition in support of some of the charges, from personal knowledge of their truth, as she testified. This so incensed many of the federalists, that they sacrificed their votes by giving them to her name, as their best method of wreaking their vengeance. A puny contrivance to be sure. In Portland, especially, among the votes for County Treasurer, were only 23 for William Lord; the standing federal candidate, and *ninety-nine* for Delia Bodge!

from both the honors and emoluments of office in disgust, rather than have the odium of a foul character attaching to them, and polluting their stations.

But our limits permit us to take only a cursory view of the electioneering canvass. The result of it will be unfolded as we sketch the proceedings of the Legislature of 1830. The choice of Senators in the several districts, and of Representatives in every town, was contested with not much less warmth than the choice of Governor, by the same parties and upon the same grounds. And such had been the constant growth and increase of the friends of the new national administration, or the republican party, since the preceding annual election (in 1828) that the federal party were quite alarmed after the election, lest they should be thrown into a minority at the approaching session of the legislature, although they numbered in the Legislature of 1829, a majority of more than two to one over republicans!

CHAPTER IV.

Meeting of the Legislature of 1830.—*State of Parties.*—*Purging the House.*—*Case of Andrew Roberts.*

1830. So great had been the increase of the republican party, and that increase was so sensibly felt in all parts of the State, that it was equally uncertain, until the meeting of the Legislature in January, whether any, and, if any, which candidate had been elected Governor, or which party would have the ascendancy in the government. The observant and experienced of each, knew full well that now, as at most other periods when parties are near an equipoise, there were a few weak-minded, faint-hearted, timid men in the House of Representatives, ambitious of popularity and supposing it to be acquired easiest by sailing in the strongest current, who could not be safely relied on by either party. All foresaw that, upon the vote of these, in all probability, would depend the result of the first, and every succeeding trial of strength between the two parties, as in fact it turned out

Many efforts were consequently made by each party, to draw in this floating lumber, to themselves. Large* promises were what most probably prevailed in the end, and determined the character of a long chain of events that succeeded. It is just to remark here, however, that the constituents of these men would have experienced no small share of mortification, could they have been made sensible of the degree of distrust and contempt with which their representatives were regarded by the members of both parties, and by an observant public. It would be safer for a town, as a general rule, to be without a representative, than to entrust important interests to the charge of weathercocks, who thus become the sport of every man's breath, and the tool of any demagogue that may mark them for his purposes. A proud and intelligent people should scorn to be thus represented. A man of decision, who can be found on the one side or the other, undisguised, may be trusted, and therefore will be respected, by friend and opponent, though destitute of other distinguishing traits of character. But the man who whiffles and turns, first to this, and then to that party,

* Mr. Charles, of Fryeburg, was one of the number who filled up the character of a "twaddler," to perfection. It so happened, however, that he arrived in Portland, with Speaker Goodenow's recommendation of him to the office of Register of Probate in Oxford, one day too late! Thomas Clark was nominated by Mr. Huntoon, the day before Mr. Charles furnished *evidence* of his claim to the office, which, however, was not the fault of Mr. G. and could not be alleged as any breach of promise on his part.

The following article from the Augusta Patriot, of April, 1830, will also throw more light upon this subject:—

"It will be recollected," says the Patriot, "that before the organization of the last Legislature, great doubt existed as to the votes of Messrs. Searle of Norridgewock and Weeks of China. The Republicans were confident of receiving their support, and were not a little surprised when they saw these men acting with the Huntoon party. Strong suspicions were entertained that foul play had been used, and subsequent events have shown that those suspicions were not groundless. When Mr. Searle went to Portland he was decidedly in favor of the re-appointment of his personal friend, Jonas Parlin, Jr. Esq. to the office of Sheriff of Somerset. He had not been in Portland many days when his views changed, or rather were changed, and *he himself became a candidate for the same office*—a thing he had never thought of before he left home. Petitions for him were immediately circulated throughout Somerset, and every effort was made to insure his appointment. Now whether any promise was made that Mr. Searle should be Sheriff in the event of Mr. Huntoon's success, we do not pretend to say—We merely state the facts and leave others to draw their own conclusions. But in the case of Mr. Weeks we have still clearer evidence that promises were not spared in procuring and retaining a majority for Huntoon in the last Legislature. *We know* that Judge Greene, the late Marshal, last winter promised to give Mr. Weeks the privilege of taking the census in five towns. This looks so much like using the influence of office for electioneering purposes, that we hope our neighbor of the Journal will notice the fact in his next article upon "rewards, punishments, &c."

courting both and betraying both in succession, soon acquires, as he justly merits, the contempt of all, be his other qualities what they may; and his constituents thereby lose their influence almost entirely, in the councils of the State.

The Legislature met on the sixth day of January. Great anxiety was felt at this time, both in and out of the two branches, to know the state of parties. It had ever been the practice before, on the call of the House to order, to proceed to the choice of a chairman first, then to form a committee to receive the credentials and report the number of members returned, for the purpose of ascertaining if a quorum had met; and next to inform the Governor of their readiness to take the oaths of office. After these preparatory steps, and the oaths of office had been administered, the choice of a Clerk, and then of the Speaker, had been invariably the business next in order, as essential to a proper organization of this branch. Without the choice of these two officers, neither the Senate nor the House had ever been considered as constitutionally organized to transact any business. But ere the Legislature of 1830 had passed through these first stages, it was obvious that they had fallen upon entirely new, if not altogether evil, times. Something more than ordinary usages were perceived to be necessary by one party in the House, to ensure *them* the choice of Speaker, which is regarded by every party, for party purposes only, as an important point to gain. The federal party were not prepared to abide by precedents, and to go forward to the usual first trial of strength in the election of Speaker. They had ascertained with sufficient certainty to excite their fears at least, that they should not have a majority of all the members returned, unless the House could be *purged* of one or more individuals, who were obnoxious to them, and unless a like number could be intimidated by some bold stroke at management, or coercion. But for either of these, at that early stage, the opposite or republican party were in no degree prepared. Relying upon the justness of their cause and purposes, and not supposing that the precedents of many successive years, against the soundness of which no suspicion had been known to exist, would be violated for mere party designs; and much less, that the principles upon which they had

been based, would be entirely set at nought, the republican party expected and wished only a fair expression of the people's will, through the representatives then assembled by virtue of the constitution, and the credentials they had derived from the people. They were therefore taken by surprise, in the course proposed by their opponents. The times had become desperate for the latter, and federalists saw it to be the last opportunity they should probably have, of making any thing like an equal struggle with their conquering rivals. Their number, which in the Legislature of the preceding year was double that of republicans,* they saw diminished now perhaps, to a minority. The end, and not the means to be employed, engaged, therefore, their whole study. They appeared to resolve, first, on setting up their own will and wishes as the standard of the will and wishes of the people, and, to this, to compel every thing to bow—*peaceably if it would*, or *forcibly if it must*. Men, precedents, laws, and even the constitution itself, in despite of its sacred character, were severally to be reduced by force, or by construction, as circumstances might require in the progress of their purposes.

The House† was called to order by Mr. Smith,‡ of Nobleborough, and Mr. White, of Monmouth, was elected Chairman. The usual motion was then made, to form a committee to receive the credentials of members present, for the purpose of ascertaining if a quorum was present. After this committee had been appointed, Mr. Bourne, of Kennebunk, for many years an active partizan of the federal party, moved to instruct the committee to report the names of such members as appeared to be duly retur-

*This note was designed to come under page 17, but will not be amiss here, to show the change in the state of parties.

The votes in the organization of the Senate, were 15 out of 17 for Mr. Cutler. In the House, for Speaker, the votes were 97 for the federal candidate, to 44 for the republican candidate, and three scattering. During the session there was evidently some considerable vascillation on the part of several, who felt not at home in the federal ranks. FORTY-ONE was the true number of sterling and undeviating republicans at the commencement. Nevertheless, on the question of appointing the old Portland Gazette the State paper, instead of the EASTERN ARGUS, the federalists could muster but 79 votes, to 53 on the republican side. This last is believed to be the greatest republican vote given during the session.

† We say "the House," although not organized. The members, in fact, constitute but a convention, for the purpose of choosing a Clerk and Speaker only, previous to their organization.

‡ The reader will discover to which party the several gentlemen whose names we shall have occasion to use, belonged, by referring to the list of yeas and nays furnished in the sequel.

ned, with the names of their respective towns or districts, and a statement of facts on such as appeared to be in any way irregular. This motion struck all who were not let into the design of it, as *novel* and *unprecedented*. But it was, nevertheless, permitted to pass without opposition. From the amount of labor, and unusual investigation thus imposed upon this first committee, the House was soon informed that a report could not be made until the afternoon. It therefore adjourned until the afternoon, without effecting any other business.

In the afternoon, the committee reported the names of all the members, with a particular statement of facts in relation to a few, whose names were not added by the committee to the list of members duly returned, within the meaning of the instructions given to the committee. Among these last, was the name of *Andrew Roberts*, of Waterborough. He was known to all to be a member of the republican party. To his certificate, the committee reported one exception only. It was, that the certificate stated that the meeting of the town of Waterborough, holden on the 14th of September, for the choice of representative, &c. "was adjourned by Andrew Roberts," chairman of the Selectmen, until the 15th, when Mr. R. was elected. The following is a copy of his certificate.

"STATE OF MAINE.

At a legal meeting of the Inhabitants of the town of Waterborough, in the County of York, qualified by the Constitution to vote for Representatives, holden on the second Monday of September, being the fourteenth day of said month, in the year of our Lord one thousand eight hundred and twenty-nine.

The said Inhabitants gave in their votes for a Representative to represent them in the Legislature of the State, and the same were received, sorted, counted and declared in open town meeting by the Selectmen who presided; and in presence of the town Clerk, who formed a list of the persons voted for, and made a record thereof as follows, to wit:

	First Ballot.	Second Ballot.
For	Andrew Roberts, ninety one.	one hundred & ninety-one.
"	Henry Hobbs, ninety.	ninety one.
"	John Hill, Jr. twelve.	three.
"	Paul Chadbourn, sixty five	fifty-six.
"	Samuel E. Smith, one	
"	John Bodwell, two.	
"	Abijah Usher, two.	
"	Nathan D. Appleton, two.	
"	Orlando Bagley, twenty five	five.

	Third Ballot.	Fourth Ballot.
For Andrew Roberts,	one hundred & twelve.	one hundred and seven.
For Henry Hobbs,	ninety one.	seventy seven.
" Paul Chadbourn,	fifty seven.	fifty three.
" Orlando Bagley,	four.	two.
" William Dearing, Jr.		fifteen.

Fifth Ballot.

For Paul Chadbourn, forty-nine.
" Henry Hobbs, seventy.
" Andrew Roberts, one hundred & two.
" William Dearing, Jr. twenty three.

This meeting is adjourned by Andrew Roberts until nine o'clock to-morrow.

TUESDAY, September 15th, 1829. Met according to adjournment and voted as follows:

	First Ballot, on Tuesday.	Second Ballot.
For Andrew Roberts,	thirty seven.	fifty one.
" Eld. James Gray,	twenty four.	nine.
" Eld. Henry Hobbs,	twenty two.	twenty three.
" William Dearing, Jr.	four.	two.
" Ramsdell Tripp,	one.	
" William F. Burnham.		one.
" John Hamilton,	one.	
" Paul Chadbourn,	one.	three.
" Orlando Bagley,	one.	

ANDREW ROBERTS, }
ORLANDO BAGLEY, } Selectmen of
JOHN HILL, JR. } Waterborough.

Attest—ORLANDO BAGLEY, Town Clerk.

Secretary of State's Office,
Portland, May 5th, 1830.

I hereby certify that the foregoing is a true copy of the original now on file in this office.

Attest——EDWARD RUSSELL, Secretary of State.

Mr. Smith, of Nobleborough, moved to admit Mr. Roberts to his seat, by adding his name to the list of members duly returned in the report of the committee. Now came the first developement of party violence. The great design of Mr. Bourne's instructions to the committee was now made apparent. Mr. Smith's motion was forthwith opposed by Messrs. Goodenow, of Alfred, Bourne of Kennebunk, Smith of Newfield, Boutelle of Waterville, and Adams of Portland—each of whom, save the first, had for years been undisguised federalists and pioneers of the federal party. The first had also given in his adhesion to that party, for purposes of self-aggrandizement,

such as republicans had refused to countenance so long as he remained with them. On the other side, Mr. S's motion was advocated with no less spirit by himself, Messrs. Burnham of Orland, and Ruggles of Thomaston—all of whom had been from their boyhood the untiring supporters of democracy. From the political characters of these leaders in this first skirmish, the inquiring observer could readily discover the distinctive characters of the two parties, although it was about this period that the members of the party headed by Messrs. Boutelle, Adams, &c. began to assume the title of *National Republicans*, in order to evade the more significant title of *federalists*. But it mattered little by what name they styled their party, so long as they displayed to the people an unbroken body, determined not to be scattered or to abandon their purposes, and equally determined against falling into the ranks of the republican party; or, in other words, determined to oppose the republican party at every turn.

The motion of Mr. Smith upon Mr. Roberts's claim to a seat in the House, was of a *defensive* character entirely, whether we look to Mr. R's personal rights, or view the subject in the light of its effect upon the republican party, or whether it be considered with reference only to established principles, and the preservation of SALUTARY PRECEDENTS. In the first place, it was not disputed, that the town of Waterborough was entitled to one Representative in the House, nor that Mr. R. was the only individual who had, or pretended to have, any show of authority from that town to represent her in the Legislature. Under these circumstances, although his credentials might appear defective in either form or substance, it was in violation of all precedent, and subversive of both Mr. R's personal rights and the corporate rights of Waterborough, to withhold from him the privileges of a member, before the usual committee on contested elections had bestowed upon both sides of the subject the investigation customary in such cases. It was wrong in principle to do so, and arbitrary in the extreme. For the act of depriving a town of her representative, or of even deciding upon the construction to be put upon a certificate of election, emanating from the proper officers and authority of a town to give it, is a piece of legislation as *high* in its character, and as *solemn* in its operation, as is that of passing a law,

or resolve, to be binding upon that or any other town. It consequently stands to reason, and is the decision of common sense, that as perfect an organization of the House is required to do the one act, as to do the other. No one can be so preposterous as to contend, that the House, or members elect of the Legislature, can properly pass a law or resolve before they have organized as the constitution requires, by the choice of a presiding and *recording* officer. How then can they properly pass, at such an imperfect stage of their being, upon the no less sacred and important rights of this or that town, by sitting in judgment upon the person, or credentials of the person, appearing as her representative?

To test this matter further, let the reader look to it from another side. If the House had authority thus, while in its unorganized state, to *reject unconditionally* the credentials of a member, so as to deprive him of a seat; the House, of course, must be admitted to have, at the same early period, the corresponding authority to *confirm unconditionally* the credentials of a member, so as to *establish* to him a seat, beyond every thing except a vote of expulsion or impeachment. In other words, the decision on the rights of different members, IF *it can be properly made at that early stage*, must operate to *confirm* those of the accepted, *without condition*, as fully and effectually as it does to *reject* those of the non accepted; so that neither, each being absolutely and unconditionally disposed of then, can be *properly* subjected to, or fall within the reach of, a *second* adjudication. But this reasoning would establish the greatest of absurdities—viz:—that the House, when *unorganized*, has greater power over the elections of its members, than the House has when *organized!*

The absurdity of this last position lies not in the principle, but in the *application of the principle.* If the application be unwarranted, then the reasoning from it must be admitted *erroneous.* We will test the application.

Whenever the principle of delegating power to the House *in its unorganized state*, will apply, *there* the House, in its unorganized state will be allowed by all to have *greater* power, than the House has when organized. The House, for instance, when not organized, has the power to elect a Clerk, or Speaker. This election the

House cannot afterwards annul, or undo in any degree. And why? Because the necessity of the case renders that power essential to the House in its then imperfect state, and the principle of exclusive jurisdiction therefore applies. But as to the election of members, and all other matters, no such *necessity* exists: and therefore the principle of exercising exclusive or any other jurisdiction over them, by the House, *while unorganized*, does not apply. Hence, too, is it improper and unjustifiable, for the House, under such circumstances, to exercise it. For the same reason, all practice and precedents in this State were against it. But this power is what was proposed to be exercised by the federal party, through the instruction of Mr. Bourne's motion to the first committee on credentials. And Andrew Roberts's rights, as the representative of Waterborough, were the first marked to fall under it. To *defend* him and his rights, against such a novel claim of power, and such a novel tribunal as were the members elect of the Legislature previous to their organization, the motion of Mr. Smith was made.

It will be perceived that the certificate of Mr. Roberts was in the regular and usual form, and signed by the proper certifying officers of the town, and could be objected to only because it said the meeting on the 14th was "adjourned by Andrew Roberts." Mr. Roberts stated, that a vote of the town to adjourn was first passed, and that he only declared, in accordance with said vote, the meeting adjourned; and that the town clerk stated the fact on the record and in the certificate, that Mr. R. declared the meeting adjourned, because it was denied that the town could adjourn a meeting beyond the day designated in the constitution, for the purpose of electing a representative. The object of the clerk was, amid this difference of opinion in regard to the powers of the town as to an adjournment only, to show by which of the presiding officers the meeting was *declared* to be adjourned. Such afterwards appeared to be substantially the fact.

It was contended against Mr. Smith's motion to allow Mr. Roberts to retain his seat, that the 15th of September, the day on which Mr. R. was elected, was the day appointed by law for military review and inspection, and that by the constitution elections of civil officers could not be made on that day. Also, that as the meeting was

adjourned to nine o'clock in the morning, and as the law provides that meetings for the choice of State officers shall not be called until eleven o'clock in the forenoon, in towns not having five hundred voters, and that as Waterborough had not that number, therefore the meeting on the 15th, was void, and its doings, including Mr. R's election, were all of no effect. It was further contended, that if the meeting could have been legally holden on the 15th, contrary to the beforenamed arguments, still there was no legal adjournment of the meeting holden on the 14th, inasmuch as Mr. R's certificate shew it to have been adjourned by an individual, who, as an individual, though a presiding officer, had not authority so to adjourn a town meeting;—under these circumstances the meeting, it was contended, was dissolved, on the 14th, and not adjourned to the 15th.

On the other side it was contended, that Mr. Roberts's certificate was *prima facie* evidence of his right to a seat, and sufficient to entitle him to it, until the committee on contested elections should investigate his election by the usual rules and at the usual time, when all sides could be heard, and justice rendered certain. That, a town, if once legally assembled in town meeting, had full power to adjourn their meeting to any day, or to any hour of any day, they might select. That, an adjourned meeting, though holden on a day subsequent to that on which it was originally called, had ever been recognized, and was in fact, as the meeting of the first day. So the business transacted by our courts on any day of the term is considered as transacted on the first Tuesday, third Tuesday, or on whatever day the court first met, instead of on the day when it actually was transacted. That, the law regulating the hour on which the meetings shall be held in particular towns, applied not to the meeting on any adjourned day, but to the calling of the meeting on the first day. A town has an unquestionable right to continue its meeting, after being once properly called, through the night until eight, nine, or ten o'clock of the next day; and by the same right, may adjourn over night to either of those hours, and neither the law regulating town meetings, nor the law regulating military trainings, can deprive a town of these constitutional rights. It was further contended, that the certificate need not show that the

town passed a vote to adjourn the meeting. Such a vote was always presumed from the subsequent meeting and acts of the town. That, the certificate did not show the meeting to have been adjourned by Mr. Roberts, as chairman of the Selectmen and presiding officer of the town, *without a vote of the town;* and therefore, it should not be presumed that he did so, even if he had not declared to the House that such a vote was previously passed by the town. The certificates of other members present, who had been elected at an adjourned meeting of their respective towns, were not required to show that a vote of adjournment was formally passed by the town; and therefore Mr. R's certificate should not be required to do so, nor rejected because it does not show that fact. That, if there was as much in his certificate as in the certificates of other members, then it should not be called in question, more than those of other members. That, if there was more in it, than in the certificates of the other members, so much should be passed over as surplusage, until the committee on contested elections could give it the usual investigation, and ascertain whether such surplusage was, or was not, fatal to the election made by the town. Further, that it was premature to go into an investigation of Mr. R's right to a seat, before the House was organized. That, to do so was contrary to all precedents—without any authority to justify it, and subversive of the rights of both representative and constituents.

It was farther avowed,* on the other side, that the course adopted to purge the House, had been suggested by the known equality of the two parties, and that the object was "to preclude any individual from voting in the organization of the House, without an undoubted right to a seat."

The frankness of this avowal was creditable. But the fallacy of the argument, and the injustice of the object it disclosed, were not deep from the eye of the observant spectator. The immediate and previous organization of the House might have been urged by Mr. Roberts, or his friends, "to preclude any individual from voting" *on the question of his election or his rights* "without an undoubted right to a seat," with as much propriety as the proposed system of purging the House could have been

* By Mr. Bourne, of Kennebunk.

urged, to preclude any such from voting in the *organization.* The organization came as properly *before* decisions on contested elections, as contested elections could before the organization. The principles that might be involved in the contested election of Mr. Roberts, could not be presumed to be less important or less sacred, and certainly not less deserving of constitutional protection, than any principle that could be involved in the choice of Speaker; so that the latter might have been urged upon the decision of the House first, with as much propriety, to say the least, as could the former. And with far more, when it is considered that all precedents were in favor of it, and that the House, *until organized*, has no express nor implied authority from the constitution, to meddle with any business except that of electing its presiding and recording officers. Upon the plain principles of common sense, such as strike every man's understanding alike, the House is as incompetent to proceed on any business involving the rights of any portion of their constituents, or of the people, until after it has elected an officer to *preside* over and another to *record* its proceedings, as a ship is to proceed on a voyage, before she has a rudder and helmsman to steer, and some other man to keep reckoning of her course and distances.

From a suggestion, dropped in the course of the argument upon the subject, that the members of the House had not taken the oaths of office, and were not therefore qualified to act as legislators, Mr. Boutelle saw the propriety of adhering a little to the requirements of the constitution, and moved an order, which was in the latter part of the day, to send a message to the officiating Governor, that the members of the House were ready to take the oaths required by the constitution. As this motion was in conformity to usage, and appeared somewhat like getting the House back into the proper business of the session, it met with a ready concurrence from the republican party. A message was sent accordingly, and the oaths shortly afterwards were administered by the Governor. But the debate was then resumed upon Mr. Roberts's claims, and continued until evening, when the House adjourned, without attempting a choice of either Speaker or Clerk!—an occurrence which never before took place under our government. This, however, was but the be-

ginning of *delay* in the proper business of the session, and the beginning of a series of measures without precedent, mainly designed to obtain an ascendancy in the government for a particular party, at the expense and to the neglect of the people's interests.

CHAPTER V.

Case of Andrew Roberts, continued.—Case of Simeon Fowler, Junior.

On the next day, the consideration of Mr. Smith's motion was resumed. The relative importance of a fair, full and just decision on Mr. Roberts's election and the rights of the people of Waterborough, on the one hand; and of the choice of Speaker on the other, was compared, and the previous nature of the latter ably set forth by the republican Members. They urged, too, the propriety, the expediency, and the justice, of not acting upon the subject of Mr. R's election at that unusual stage of the session, and before the House had been organized, or any recording officer elected to keep a record of their proceedings. The adverse party were beseeched to pause—to contemplate the danger of such a precedent—the violence of the proposed measure—the impossibility of going into the merits of the case then, when Mr. Roberts could not be permitted to explain by testimony the real meaning and occasion of the doubtful passage in his certificate. They asked, was such a proceeding ever before heard of? ever before witnessed in the hall of any legislative assembly? Did party spirit and desperation ever before project such a movement? Could the people be prepared, whatever might be the intrinsic merit of Mr. R's claim, to see the whole volume of precedents, accumulated and found salutary by years of experience—could the people be prepared to see these all set at defiance, overturned and destroyed, only to serve the purposes of one party, or to weaken the numerical strength of the other? For this alone was confessedly the design of purging the House at that imperfect stage of its organization.

But it was vain to argue. The measure had been matured in the private meetings of the adverse party, out of the House,* and was not to be defeated by argument, by persuasion, nor by any thing short of physical force. Every man of them was pledged to support it, let what might be said. The House was to be purged of some one or more of the republican party, or their own ascendancy might yet be secured. Accordingly, about eleven o'clock in the forenoon, the question was taken by yeas and nays as follows :—

YEAS.—*York County.*—Wedgwood, Spinney, Bradbury, J. T. Chase, Clark, Lord, Kezar, Goodwin, Roberts, C. Chase.—10.

Cumberland.—Larrabee, Rideout, Wheeler, Woodbury, Strout, Morrell, Mann, Latham, Stinchfield, Waterman, Jordan, Fogg, Shaw, Bishop.—14.

Lincoln.—Linnen, Smith, Watts, Ruggles, Lermond, Andrews, Thomas.—7.

Hancock.—Thomas, Burnham.—2.

Washington.—Chandler, Farnsworth.—2.

Kennebec.—Johnson, Howard, White, Morse, Bridgham.—5.

Oxford.—Hutchinson, Frost, Heward, Small, Barnard, Tobin, Perry, Cole, Bonney, Nevers, Howe.—11.

Somerset.—Bartlett, Bean, Patterson.—3.

Penobscot.—Kelsey, Bartlett, Emery, Lowney.—4.

Waldo.—Richardson, Lambert, Rowe, Trafton, Goddard, Small, Snow, Glidden, Lennan, Knowlton, Alden, Swett, Carr.—13.

TOTAL 71.

NAYS.—*York County.*—Goodenow, Shapleigh, Deshon, Bourne, Stone, Hill, Sanborn, Smith, Scamman, Powers, Gilman.—11.

Cumberland.—Curtis, Willet, Mitchell, Wells, Sylvester, Johnson, Blake, Adams, Swan, Dodge, Waterman.—11.

Lincoln.—M'Gunn, Hatch, Jaquith, M'Kown, Baxter, Sewall, Trask, J. Smith, Tibbetts, Myrick, Perkins, Shaw, Patterson, Miller, Peaslee.—15.

Hancock.—Pond, Walker, Allen, Johnson, Crabtree.—5.

Washington.—Folsom, Mowry, Butterfield, Hamlen, Freeman.—5.

Kennebec.—Severance, French, Weeks, Ames, Adams, Clark, M'Gaffy, Scamman, Spaulding, Hoyt, Merrill, Robinson, Bontelle.—13.

Oxford.—Charles, Parsons, Barrell.—3.

Somerset.—Caldwell, Norton, Hutchins, Allen, Bartlett, Thurston, Searle, Greaton.—8.

Penobscot.—Kent, Clarke.—2. *Waldo.*—Bennett.—1. TOTAL 75.

* The leading members of the Federal party met weekly in Boston several days before the sitting of the Legislature, in season to watch the arrival of every member of whom they had any hopes of gaining to their side. And for the purpose of drilling the forces more effectually and secretly, they monopolized the new tavern in Fore Street, some days in advance of the session. No man in the Legislature could therefore obtain accommodations of board or lodging there, during the session, without their consent. It was at this place, also, where the Federalists held their nightly caucusses, from which the house acquired the name of the "FEDERAL SCREW PRESS."

Thus was consummated an act of arbitrary usurpation, and proscription that cannot be justified upon any sound principle of public policy. And thus was a precedent formed, in violation of all precedent known to the government, or to the people and a system adopted of *purging* the House of its members, for party purposes, which was aptly denominated in debate, *Colonel Pride's Purge*.* It was clearly a miscalculation in the authors of it, when they supposed that the candid, dispassionate and intelligent yeomanry of the State, would so far feel the excitement of party politics, as not to discern the danger of such a proceeding and such an abandonment of all former land-marks in legislation. It is not Mr. Roberts's individual rights, nor the temporary effect which his exclusion from the House in such a manner, would have upon either party, or upon the interests of the State at large, that is calculated to arouse the people's fears and indignation. But the danger of such violence, as a PRECEDENT! To what, if countenanced in one instance, might it not lead, in the course of time? From less beginnings the most tremendous proceedings have followed in some governments, and ended not but with the subversion of all order and the consequent miseries of anarchy. It is a lesson of wisdom taught by another, that "the only rule of government known and acknowledged among men, is USE and PRESCRIPTION. Reason is so

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* [illegible] —

"When the [illegible] opposed to Cromwell and his [illegible] were to meet, [illegible] Colonel Pride, formerly a drayman, [illegible] the House with [illegible] directed by Lord Grey, of [illegible] [illegible] about [illegible] were afterwards [illegible]. Above one hundred and sixty members [illegible] were [illegible] but the most [illegible] and most determined of [illegible] exceeded not the number of fifty or sixty. This [illegible] parliament [illegible] passed under the name of Colonel Pride's Purge."

Pride's Purge was [illegible] favorite project with Cromwell. We find he had [illegible] a few years after [illegible] it. The [illegible] 1656, [illegible] [illegible] members [illegible] [illegible] [illegible] both by the council and the parliament."

uncertain a guide that it will always be exposed to doubt and controversy. Could it ever render itself prevalent over the people, men had always retained it as their sole rule of conduct. They had still continued in the primitive, unconnected state of nature, without submitting to political government, whose sole basis is, not pure reason, but AUTHORITY and PRECEDENT. *Dissolve these ties you break all bonds of civil society, and leave every man at liberty to consult his private interest, by those* EXPEDIENTS, *which his appetite,* disguised under the appearance of reason, shall dictate to him. *The spirit of innovation is itself pernicious however favorable its particular object may sometimes appear.*"*

In fine, the people must stand firmly by the government, and THE SALUTARY PRECEDENTS ESTABLISHED UNDER IT, let party purposes suffer as they may, if the people would have that government, and those precedents, stand by them.

The name of *Simeon Fowler, Jr.*, who claimed a seat in the House as member elect from Brewer, &c., was also omitted in the list of members reported as duly returned, by the before named committee on credentials. The report represented that in said town of Brewer, a part of the votes were given for Simeon Fowler, and a part for Simeon Fowler, *Junior*, and a part for some other person. Both of the former resided in the same town, and by uniting the votes given to both, one of them would be elected. But without such a compound neither was elected. Nothing appeared in the certificate of votes, produced by Mr. Fowler, Jr., to show that the votes given for Simeon Fowler, were designed for Fowler, Jr., more than to shew that the votes given for Fowler, Jr., were designed for Simeon Fowler. Nevertheless, Fowler, Jr. was known to be pledged to the federal party, and Mr. Kent, of Bangor, thereupon moved to amend the report of the committee on credentials, by inserting the name of Simeon Fowler, Jr. among the names of members *duly* returned!

After the rigid confinement of Mr. Roberts to the evidence contained in his certificate *exclusively*, which was also as susceptible of as fair a construction, to say the least, to support as to negative his election, it was not expected that any pretence would be set up in favor of

* Hume's Essay "On the Coalition of Parties."

Simeon Fowler, Jr.—he too, as it was supposed from the rule established in Roberts's case, being destined to rely on his unexplained certificate altogether, to support his claim. His certificate negatived his election as plainly and distinctly as it shew that Simeon Fowler and Simeon Fowler Junior, were two different persons. And moreover, it as plainly shew that Simeon Fowler, Junior, was not elected, as it did that Simeon Fowler and the other persons voted for were not. But the subject was debated through the remainder of the forenoon, and when the House met in the afternoon, it was resumed. At length the motion was lost, by a vote of 66 in the affirmative, to 68 in the negative.

On seeing the result, Mr. Baxter, of Bristol, a member of the federal party, rose and declared that he had voted with the majority, but would move for a *reconsideration* of the vote! It was evident, that conscience had done her duty to Mr. Baxter, in persuading him to vote against his party, on the subject of Mr. Fowler's claims; but, that devotion to his party, or the terrors of "*The Federal Screw Press*" in a moment longer, forced conscience into the back-ground, and persuaded him to an act upon which, to the latest day of his life, he must look back with feelings of inexpressible remorse. His motion, coming so suddenly upon his last vote, and when contrasted with that and the measure he had just before helped to deal out to Mr. Roberts, exhibited a spectacle of political, and, we might say, moral turpitude, as abhorrent as the treachery which so soon succeeded "the kiss of Judas!" However, he had strained himself up to it, and one strange thing was so rapidly succeeded by another, that republicans had time only to reflect on the defence they could make to them. A motion was first made and declared to be a vote, to take the question of reconsidering, by yeas and nays, that the people might be more accurately informed who were for, and who were against them. But this vote was doubted, though immediately made certain by a division of the House. The Chairman, overlooking the previous question of reconsidering the vote whereby Fowler had been refused a seat, put the *main question* previously settled on the motion of Mr. Kent viz. to amend the report of the committee on credentials, by inserting the name of Simeon Fowler, Junior.

in the list of members duly returned. On the call of the yeas and nays, *Mr. Fowler Jr. voted in favor of himself.* But before the result was declared, Mr. Ruggles, of Thomaston, rightly questioned the propriety of Mr. Fowler's voting *then* not because it was in his (Fowler's) own case, but because, by the former vote of 68 to 66, he had been excluded from having a seat—and that, as *that vote* had not been reconsidered, but as the vote then before the House, *undeclared*, was, or should be, on the question of reversing that vote, he, Mr Fowler, had not been restored to his seat, and therefore had not a right, *as yet*, to vote.

Mr. Goodenow, of Alfred, contended that there was no impropriety in Mr. F's voting for himself and was followed by Messrs. Adams and Swan, of Portland, and others, who contended that the question now before the house was upon inserting Mr. Fowler's name in the report of the committee; that the question of reconsidering, had already been taken, and that Mr. F. consequently had a right to vote.

Other gentlemen contended that the question of reconsideration had not been taken, or not understood. The Chairman remarked, that his own impressions were, that the question to reconsider, on motion of Mr. Baxter, had not been put—but that the call for the yeas and nays, just made and undeclared, was upon *that question.* He could not, however, be distinct in his recollection as to the nature, or the form, of the questions that had been taken, as the House had *no Clerk to note the proceedings*, and as so many opinions prevailed in the House upon the subject, he wished the House to determine the question to be considered. Considerable discussion ensued. Mr. Ruggles, of Thomaston, explained the motions and the order in which they had been put, and contended that the question upon reconsidering the former vote had not been put. But to cure all omissions, and to enable the convention to proceed without further *delay*, he moved that the yeas and nays, as taken, and not declared, be considered as embracing both the motion of reconsideration, and the motion of amending the report. To this, Messrs. Goodenow, of Alfred, and Bourne, of Kennebunk, objected, when Mr. Ruggles, to avoid farther discussion and delay, withdrew his motion.

The Chairman then proceeded to declare the yeas and nays, as taken upon the question of amending the committee's report, by inserting therein the name of Simeon Fowler, Jr., which were, yeas 73, *including Fowler's own vote*, nays 72. The House then adjourned until the next morning at nine o'clock. Two days thus had been spent, in consequence of these extraordinary proceedings introduced by and for the benefit of, the federal party *exclusively* without coming to the question of choosing either Clerk or Speaker! Down to this period, but little doubt can exist as to which party was most deeply in the wrong.

In these last proceedings, the mischievous operation of the new system of purging the House, was made manifest. And the danger and impropriety of the House's proceeding to settle questions of contested elections or any other business, before the House had been properly organized, was strikingly illustrated. Had there been a *recording* officer the contusion about the question before the House, and as to what questions had and had not been put, would not have occurred. The like had never occurred before. The record would have shut out all confusion and all dispute. But precedents, and all the proceedings usual on the first meeting of the House, had been laid aside entirely, by the course of proceeding introduced by the federal party, and *confusion was inevitable*. The members of the House were left without chart or compass by which to shape their course and such a scene followed, as every one must naturally suppose would follow, under such circumstances. It is obvious, that those who introduced the confusion intended to take advantage of it. And so they did. In proof of it, Simeon Fowler, Jr. was boldly sustained in voting to restore his own name to the list of members *duly* elected, although he had by a fair vote of 65 to 66 been excluded from his seat; and although that vote, excluding him, had not been *reconsidered!* And further his own vote alone was allowed to turn the decision in his own favor, when without his vote, the House would have been divided 72 to 72, and he would have been excluded a second time, upon those very principles alone, which had been established by his friends to exclude Mr. Roberts! Or had Mr. Roberts voted, as of right he could have done, having been impro-

perly excluded, Mr. Fowler would have had a vote of 73 against him, to 73 for him, admitting that Mr. R. would have voted against Mr. F. upon the same principle by which Mr. F. had already voted against Mr. Roberts. But violence always destroys the equability of every principle, and by it the federal party first destroyed the balance of power held by their opponents, and then, to sustain their ill-gotten ascendancy, they resisted the very rule which they themselves had established to operate upon others!

The candor and fairness exhibited by republicans in this case of Mr. Fowler, indicated their composure and regard for order, and shew them to be acting entirely upon the defensive, against the rude proceedings by which the House had been thrown into commotion. Mr. Ruggles, to have all questions decided, necessary to make their doings straight and plain, amid the confusion that prevailed, moved that the question of reconsidering the vote whereby Fowler was excluded, should be taken in conjunction with the question of adding his name to the list of members duly elected, and both decided by one call of the House,—so that the last question should not be put, while the question of reconsideration, which was previous in its nature, was undecided. But no—the federalists felt too conscious of the impropriety of Fowler's voting on the question of reconsidering a vote whereby he was excluded from his seat, and therefore they resolved on braving it out, that the question of reconsidering had already been put, or passed over; and that the question then before the House was, on adding Mr. F's name to the list of members! To avoid "confusion worse confounded," Mr. R. shortly withdrew his last proposition, and let matters drive on in the way they had been so strangely forced.

It is not our object to comment on these proceedings in the severity they would warrant, but, to leave the reader to draw his own conclusions, with a mind unbiassed, and a disposition to decide fairly upon the events that transpired, between the conflicting parties. Suffice it to say that Fowler was enabled to retain his seat only in the way and by the management already detailed. He was not opposed, as the reader will observe, upon the ground that he might not have an equitable and constitutional

claim to a seat, when his certificate should be explained, but solely on the grounds which he, himself, and his friends, had established in Roberts's case: viz. that the House could not at that stage travel out of his certificate, for evidence of his election, which, by his certificate alone, could not be established. The striking inconsistency of their assuming these novel positions in Mr. Roberts's case, and then of abandoning them immediately thereafter in Mr. Fowler's case, or as soon as one of their own party was liable to be affected by them, cannot but have its due weight upon the public mind, in the formation of the character to be ascribed to the federal party now and hereafter.

CHAPTER VI.

The Senate.

The political views of the several gentlemen whom the Governor and Council had notified to appear, as duly elected Senators, were too well known to admit of any doubt. And as eight were known to be republicans, and eight to be of the federal party, it was anticipated that some difficulty would occur in organizing this department of the government.

The Members elect were called to order about ten o'clock in the forenoon of Wednesday, the sixth of January, the day designated by the constitution for the meeting of the Legislature. Gen. Steele, of Oxford county, was appointed Chairman. In the afternoon, the officiating Governor came in and administered the oaths of office to the members, after which they proceeded to ballot for President, in the ordinary routine of the business of that department. Five successive ballotings were made for the choice of President, in each of which the result was *seven* votes for Robert P. Dunlap, *seven* for Sanford Kingsbery, and two scattering. The Senate then adjourned until the next morning.

On Thursday, no choice of President was effected. Neither party as yet, was disposed to yield to the candidate of the other party, and neither, perhaps, could as yet be

justly censured. The political character or state of parties in the House, was not, as yet, rendered certain. The impression of the public mind, however, seemed already to be, that, under the peculiar state of things, whichever party obtained the election of presiding officer in the House, should yield to the other party the presiding officer in the Senate. This conviction was founded in justice, and indicated that honorable spirit of conciliation which, in despite of all excitement, generally characterizes the feelings of an intelligent community. Little expectation was consequently entertained now, by any, of seeing the Senate organized, until the choice of Speaker should be effected in the House. Subsequent events proved, how little the party that obtained an ascendancy in the House, were influenced in their course, by those honorable and conciliatory feelings which actuated the public mind in forming its anticipations upon the subject of the Senate's organization.

As early as the second day of the session, the eight federal members of the Senate indicated no less readiness to lay aside all precedents, and, perhaps,* all constitutional requirements, than had their fellow partizans in the other branch of the Legislature. A motion was made by Mr. Phelps, of Somerset county, to take up and consider the returns of votes for Senators, and to ascertain and notify who had been elected, and who were constitutional candidates to fill vacancies, and thereby to pass over in the mean time, the customary organization of the Senate! This, probably, was the first motion ever made in our own, or any other Senate, to proceed to act upon grave constitutional matters, before the previous requirements of the constitution, to qualify the Senators therefor, had been complied with. It may well be doubted, whether Senators elect, before they have been organized into a constitutional Senate, by the choice of President and recording officer, have any more constitutional right to, or control over, the returns of votes given by the people, than any other individuals in the community. The motion seemed to contemplate laying aside both precedents and the constitution, as of only secondary consideration to the ends and success of the mover's party, with which

* We say *perhaps*, because we wish to express no decided opinion to bias the judgment of the reader, until he shall have seen all the facts to judge for himself, how far the constitution was regarded in these matters.

they either were, or threatened to be, in conflict. If such were not the views of Mr. Phelps and his party, then the inference is inevitable, that his motion was designed only for a false show to the public, of an inclination to proceed to business. They could not but foresee, from the impropriety of the proposition, that it would not be countenanced by their opponents. Nevertheless, they hoped to obtain credit among the people for having offered it, by persuading them to reason only from *what appeared* to be the inclination, and not from the true intent of the proposition, or the consequences of legislating without a constitutional organization. But it requires great art and cunning in a public body, to blind an intelligent and discriminating people upon either the character or operation of any measure, however novel. Even the motive of the legislator, though it be the most secret of all, scarcely ever escapes their searching inquiries. They will form an opinion of the proposition of Mr. Phelps, as of every other measure, either proposed or carried out of season, and ripen into convictions, or abandon, the strong suspicions which circumstances have thrown upon it. It was negatived by the republican members, on the grounds and under the impressions we have stated. The vote stood as follows.

YEAS.—Messrs. Hinds,* Morse,* Kingsbury,* Gardner,† Hilton,† Healey,† Drummond,† Phelps,‡—8.

NAYS.—Dunlap,‖ Ingalls,‖ Megquier,‖ Hutchinson,§ Steele,§ Hall,¶ Hutchings,¶ Davee **—8.

On Friday, Mr. Phelps's motion was repeated by Mr. Drummond, obviously from the same motive and with the same intent as offered at first. It met, of course with the same result as before. The yeas and nays were taken upon it, and were 8 to 8. Motions were also made to proceed to the choice of Secretary and of Messenger, but were successively rejected—it being apparent that they were designed to break in upon the usual and established order of proceeding, and of keeping up a false show of a business inclination. It was clear that neither the choice of Secretary nor Messenger could forward the business of the session, while there was no President elected, to perfect the organization, and to authorize that

* Of Kennebec. † Lincoln. ‡ Somerset. ‖ Cumberland. § Oxford.
¶ Hancock and Waldo. ** Penobscot.

branch of the Legislature to act constitutionally upon other business. Several ballotings were had for President, without varying the former result.

On the succeeding or third day, Mr. Phelps came forward, with a still stronger and bolder proposition, which evinced how little reverence was felt for the order of proceeding laid down in the constitution, and followed by former Legislatures. He had now improved upon his own former motion, and added to that the further clause—*to form a convention with the House to elect Senators to fill the vacancies, and that the Senate suspend farther balloting for President until the Senators elected to fill such vacancies have been notified of their election and have taken their seats at this board!*

A more singular proposition, considering the time when it was made, probably never came under discussion any where.* The incompetency of the senators elect, to execute it, without abandoning entirely both the spirit and the letter of the constitution, appeared so clearly, that it was not regarded by the opposing party as really serious, until they found themselves involved in quite a grave discussion of it. The friends of it rested their argument upon the necessity of doing something, and expressed great anxiety to proceed to business. They said propositions to elect Secretary, Messenger and to count the votes returned for senators, had been severally made before, when the political character of the House was not known.† (The House had at this time elected a speaker.) That therefore, no improper motive could be attached to the proposition.

It was contended on the other side, or by the republican members, that equal zeal and earnestness was felt to proceed to business. But no less was felt, to preserve the constitution inviolate, and to follow its requirements. That it was better not to proceed at all, than to proceed wrong. That no authority was given to proceed in any way except as the constitution provides, and besides the letter of the constitution, years of precedents existed, by which its meaning could be ascertained. It was admitted as true, that motions to elect a Secretary, Messenger, and

* Both opinions of the Judges of the Supreme Court, in answer to interrogatories propounded by Mr. Hall first, and then by Mr. Hamtoon, confirm this position.

† A confession that the federal party regarded their ascendancy in the House as altogether doubtful, when that body first assembled.

to count the votes for senators, had been made, before the political character of the House was known;—and no less true, that they were opposed before that time; that, therefore, the same exemption from the suspicion of improper motives was due to the one side, as to the other. It was further contended, that senators, before organized into a Senate, had no jurisdiction over the elections, or return of votes, and no authority to form a convention to fill any supposed or real vacancies that might exist in the Senate, when organized. That, all precedents, and every one's construction of the constitution among the people, concurred in asserting the propriety and necessity of electing a President, before any proceeding was had upon other matters. That to form a convention with the House for any purpose whatever, a vote of the Senate, constitutionally organized, must precede.

On this motion, the members were equally divided, and it was consequently defeated. A further effort was made to elect a President, but without effect.

The reader is now carried through the four first days of the session on the part of the Senate. The House, on the third day, elected a Speaker, and, as the republican party there had submitted to the process by which the federal party had succeeded in electing their candidate for presiding officer in that branch, public opinion began now to feel disappointed, in that the federalists were in turn unwilling to yield to their opponents, so far as to allow the republican candidate to be elected presiding officer of the Senate. Nor was this disappointment without reason. It was unreasonable to ask of the federal party, more than of the republican party, in the nearly balanced state of parties in the two branches, to yield to their opponents any advantage in one branch, which they themselves did not possess in the other. It was no less unreasonable in the former to insist on having their own candidate made presiding officer in the Senate, merely because they had obtained, by a novel piece of management, the choice of presiding officer in the House.* As soon, therefore, as the election of Speaker in the House had been decided, it was supposed that the federal members in the Senate would forthwith consent to allow the

* The votes for Speaker were in all, 115. Mr. Macon now had only 73,—only *one half* a vote more than half of the whole number.

republicans in that branch to prevail, so far as the choice of presiding officer would go, and inasmuch as one, or the other party must yield, ere an organization could be effected. But the result of things in the House, instead of operating to conciliate, appeared to encourage the eight federal Senators, in insisting on the choice of their candidate. Not that the opposing candidate was not in every light, well qualified, and even better qualified from experience as well as otherwise, to preside;—but because he was the candidate of the republican party! This obstinacy, or determination to stop short of nothing but absolute possession of every advantage in both branches of the Legislature, was persisted in, through about fifty ballotings, and until the afternoon of the eighth day of the session, when the eight federal Senators gave their united votes for Mr. Hall, one of the republican members, who, by giving a blank vote at the same time, was thus elected to the presidency. The organization was completed on the next day,* by a choice of Secretary and Messenger, which shew of how little importance the election of those officers was, *as a matter of delay.*

It may be a mystery to some, why the federal members elected Mr. Hall, one of the republican party. As near as the truth can be known, they were determined on yielding nothing to their opponents, let what might be the consequences; but to hazard every thing in order to obtain the same ascendancy for their party in the Senate, as had been effected in the House. The proposition to elect Mr. Hall came from them, and what was wanted of him was stated to him. It was in substance no more nor less than to betray his friends, and to act with the federal party, *in all instances where his vote would prevent an equal division of the board:* which would have been in nearly every question, as with his vote the division would be 9 to 7, and without it, 8 to 8. He, however, was too honest a man, and held in too sacred contempt the character of Judas in the scriptures, the volume of which had

* We have before remarked in substance, that the choice of Secretary and Messenger could not advance the business of the session in any degree, as it was not calculated to delay it; and that, for this reason, the proposition to choose them, made on the second and subsequent days of the session, was only for show, and not capable of effecting any good, besides being out of order. This opinion is now proved, by the facts in the context of the above chapter.

been the chief study of his whole life,* to act a part so false, so foul, so unpardonable in the sight of God and of man. Meaning, however, to turn to good, what was designed for evil, he informed them that he was not qualified for the station—had little or no experience in its duties, but, if they saw fit to elect him, he should endeavor to discharge his obligations to the full extent of his power. The inference which the federal party drew from their conversation, may be gathered from their subsequent election of him in the way mentioned. But that those inferences were not warranted by aught which Mr. Hall said, must be obvious to the reader. Mr. Hall did not consult his colleagues upon the measure proposed, and consequently, the result of the ballotting, by which he was elected, so completely astounded them, that the opposite party now felt quite sure of having completely bought over an adversary with "a mess of pottage!" But events proved that they deceived themselves more than they deceived others—a consequence not unnatural to a policy founded on the dangerous and corrupting axiom, that "*all is fair in politics.*"

CHAPTER VII.

Organization of the House.

On the morning of the third day of the session, the House proceeded to the choice of Clerk, and then of Speaker. The former having been elected, without any organized opposition from either party, on motion of Mr. Bourne, the roll of members was called. It appeared that all were present. After a committee had been appointed to receive and count the votes for Speaker, a very singular proposition was carried. It was introduced by Mr. Norton,† of Canaan, in the following terms:—

Ordered, That when the House proceeds to the choice of

* Mr. Hall was educated to the ministry, and for about thirty years, had been a preacher of the Methodist order; and a more upright, worthy man at heart never approached the communion table under any denomination of Christianity.

† To give place to whom the late worthy Land Agent has since been removed from office, by Mr. Huntoon.

Speaker, the names of the members be called by the Chair, and that they vote in the order in which they may be called, and that the votes be received by the committee at the Clerk's desk.

The singularity of this order, produced no small sensation for the moment, both among the members and the spectators present. It was obvious that the federal party still distrusted a portion of their adherents, and were determined on getting up such an ordeal, as would intimidate the doubtful into submisssion. The order was, however, permitted to pass, and the committee were arranged around the Clerk's desk, like the guards of Cromwell about the door of the British Parliament in former times. None that witnessed this novel spectacle, could be insensible to the design.* But it had nearly the desired effect. Of the one hundred and forty-five votes given, Mr. Goodenow, the candidate of the federal party, received *seventy three*--one half of a vote more than one half of the whole number given! He was thereupon declared duly elected Speaker of the House. He accepted the station in a short and appropriate address, and entered upon the duties of it. Messages were then sent to the Governor and Senate, informing them of the organization of the House.

The next prominent measure, of a party character, introduced before the House, was an order offered by Mr. Boutelle, of Waterville, on the sixth day of the session. This gentleman, it may here be remarked, was always a member of the federal party, and we know not that he has ever undertaken to disguise his politics by assuming any of the newly invented distinctions. The order was, as follows:—

"Whereas, it was effectually made known to this House on the first day of the session by the Secretary of State, that he had laid the votes [for Governor] before the Senate; and whereas, it is not known to this House that any measures have been taken to examine said votes, in consequence of which the public business is delayed:—*Ordered*. That a message be sent to the members of the Senate requesting them to send to the House the List of votes for Governor, in order that the same may be examined according to the provision of the Constitution."

* Some have presumed to say that the only design was to prevent persons who were not members, from voting. The case never did occur when any citizen of Maine has had the audacity to obtrude his vote thus fraudulently upon the Legislature, and therefore, this measure is not to be justified on a score that would reflect such dishonorable suspicions upon the citizens present at the organization.

The course of proceeding here proposed was altogether new and without precedent. It was consequently a prolific subject of debate. Messrs. Boutelle, Bourne, Adams of Portland, Shapleigh, Smith of Newfield, Wells, and Severance, advocated the order; and Messrs. Smith of Nobleborough, Ruggles, Knowlton, Swett, Shaw of Standish, and Bradbury, opposed it. By the opposers of it, it was contended, that the course proposed was unprecedented—that it was novel and unexpected—that it might be a violation of the constitution,—and it was believed that it would be so, as it contemplated a disposition of the returns, without waiting the pleasure and concurrence of a co-ordinate and independent branch of the Legislature. But of this position, time for investigation was asked. It may be groundless, or it may be well founded. Time is requested to ascertain how this is. A motion to postpone it until the next day morning was made, and these points urged in support of it.

On the other hand, it was contended, that the constitution did not prohibit the course proposed,—that it was, to be sure, unprecedented and novel, but involved no unconstitutional principles;—that it was time to proceed to business, and that the House had as good a right to the votes as the Senate.

In reply it was said, that the Senate had not yet informed the House of their organization, that the House at most could claim to act upon the returns only in conjunction with the Senate;—that the Senate being as yet unprepared and not qualified to act upon them, it could not hasten nor further the business of the session by taking the returns into the possession of the House;—that all must be anxious to proceed to business, and none more so than those who wished time to consider the nature, and bearings, and constitutionality of the measure proposed. But all should be likewise anxious to do business *correctly*. The manner proposed might thereafter be adopted; but was at first sight, inexpedient, as it could not expedite the public business. The House, if it should get the returns, must then stop. The seals cannot be broken, without the concurrence of the Senate; and as the Senators have not organized, it is not unreasonable and can do no injury, to postpone this subject until the next morning, for the consideration and better understanding

of it, by those to whom it is altogether a novel and, before this, an unheard of proposition. Such a request was seldom if ever denied, particularly under circumstances which negatived the possibility of any delay in the public business. It was due to courtesy, it was due to honest motives, and it could not be anticipated that a majority of the House would deny it.

But the vote was taken by yeas and nays, and postponement was refused!—Yeas 71—nays 73.

This last vote indicated a determination on the part of the federal party, to carry every proposition by force of numbers, whether the other party were disposed to favor it or not, and whether it was understood by the latter or not. At this stage of the measure, it was not the views of the federal party that are so much exposed to censure, as the spirit in which the measure was carried. Time was asked to examine the correctness of those views; and, besides the great absurdity of them, the impropriety of not allowing those to whom the measure was an entirely new thing, time for deliberation, is what strikes the public mind as deserving of reprehension.

The main question, on passing the order, was next debated.

"Mr. Smith, of Nobleborough, said he could not suffer the order to pass without entering his protest. It was assuming a power with which the House was not vested by the constitution. If the Secretary of State had brought the votes before the House in the first instance, he was not prepared to say, that, under such circumstances, we had no right to them. Suppose, said he, the Senate were to demand the votes of us when they had been entrusted to our hands, should we be willing to surrender them at their request? The votes belong to that branch to which they have been entrusted by the Secretary of State; and we have no right to demand them from that branch. Now Sir, is it decorous, is it usual, for us to demand of them the possession of those votes, which have been consigned to their care by the Secretary of State? It is saying to the other branch of the Legislature, we place no confidence in you, the votes are not safe in your hands. WE are the proper keepers of the votes, give us the control of them, and then they will be safely and sacredly kept. It is saying to the co-ordinate branch of the Legislature, we

are afraid that you do not guard the sacred deposit with sufficient care, we doubt the rectitude of members, who sit at your board, and we will not suffer these votes to continue in your possession. We fear lest some busy body or officious meddler may break open the seals and and investigate the contents. Had such an order, he said, come before the house, as gentlemen propose to send up to the senate, he for one would have resisted a compliance with it to the utmost. He would oppose it in every stage and never surrender his own rights to what he should consider the arbitrary command of another body of men. He illustrated his meaning by alluding to the manner in which documents are kept when intrusted to referees. No one of them, he said, had any right to demand the possession of papers from another. They are vested with equal powers in this respect, and so are the Senate and House. The Senate cannot but ask the question, do you distrust our integrity? Is suspicion entertained? Do you think we shall destroy the votes? [The Speaker called the gentleman to order. No gentleman of the House had expressed suspicions against the members of the Senate.] Mr. Smith explained,—his course of argument was this,—he only intended to explain what construction the Senate would put upon such a request. The Senators, he argued, must put false constructions upon such an order; and he only wished gentlemen to place themselves in the Senate's situation. The House say, when they send up this order, we wish to take charge of the votes *ourselves*; we distrust *you*. Ought we not, he asked, to extend the same comity to them which we, in their situation should demand. It seemed to him that we had better wait at least a while, and see what course the Senate intend to pursue, especially before we adopt a motion that is so rash, and violent in the extreme. Adopt this order, said he, and you open the door for an interminable session; you throw the first stone, and challenge the Senate to combat. If gentlemen were determined and had resolved to proceed so rashly, they must take the consequences upon themselves. He would not participate in them; he would do all that could be constitutionally done, to reject such orders at such a time.

Mr. Seamman, of Saco, considered the amount of the argument of the gentleman to be this—that we must sit

in session here till the Senate see fit to proceed to business. If reports could be trusted, the Senate had done nothing; and the probability of their being able to do any thing was a dark one. [Called to order. The Speaker gave him permission to allude to the Senate so far as the House could take cognizance of the Senate; but reports must not be introduced.] Mr. S. asked if sixteen persons in the Senate were to check every operation of government, and throw the State for the present year into a state of nature—without government, without laws, and without taxes. He refered to the case of referees which had been spoken of by the gentleman from N. He said, such a case had nothing to do with the subject under consideration. Referees were one body, the House and Senate were two, and had distinct privileges. He read a portion of the constitution which says, vacancies must be filled as soon as may be. He then went on to illustrate what must have been the course of things if no Senate had been returned. The vacancies must then be filled; and gentlemen would not hesitate to say, that the vacancies should not be filled forthwith. Similar to such a state of things, he considered the present situation of the two branches of the Legislature.

Mr. Knowlton moved that when the House adjourn, it adjourn till to-morrow, at half past nine o'clock, and the motion was carried. Mr. Knowlton then moved that the House adjourn. Yeas 64—Nays 74.

The question then was upon adopting the order.

Mr. Ruggles, of Thomaston, thought it was better to pause and reflect before this order was adopted. He never knew a solitary instance in which the Senate were required to give up the votes, before they had acted upon them. Suppose, said he, on the first day of the session the Senate had been organized, and the House was not. Suppose the Senate had then demanded the votes from the House. An unprecedented measure to be sure. But what would gentlemen of the House have said? would they have been willing to surrender their right? The Senate takes precedence of the House by usage, and practice. The joint committee of the Senate takes precedence, and therefore it was proper for the votes to be acted upon there, before they were brought into this House. The gentleman from Saco asks, why should we

suffer sixteen men to delay the public business of the session. That was not a question for him to answer, but must be answered by the Senate. He did not know but the gentleman's question was a correct one in the House; but the Senate are to settle their own affairs. They have a right to do as they please, and we are not to call them to an account. Shall we pass judgment upon the Senate? is it proper for us to force them to business? We had nothing to do with the balance of power in the Senate, nothing to do with the parties there. They are acting for themselves and for the people. On contingencies, says the gentleman from Saco we have a right to precede the Senate. Who are to determine upon contingencies, especially in the present state of things? It did seem to him that the House was not so omnipotent. The House had privileges, to be sure; but it had no right to control the Senate. We cannot know that the Senate has vacancies, till those vacancies are declared. Consequently we can never proceed to business, unless the Senate take the first step. Adopt the doctrines of power which some gentlemen would give to this House, and we should need no Governor, no Council, no Senate. The House will be omnipotent enough to do all things of itself. He did not suppose the present measure of sending a message to a body which did not exist, would be fraught with evil consequences; he did not see any particular danger in such a movement; but if that were an entering wedge for ulterior operations, then he thought it was fraught with danger. He had no objections to the order, if it were only to require the votes to be put into our possession. But if it were to be the beginning of further operations, he was opposed to it. If it were to stop where it is, he had no serious objections to passing the order, but he deprecated all further attempts, all ulterior operations—and he thought these of serious importance. [Here Mr. R. remarked that it was past the time of adjournment and he would forbear, that any gentleman might move an adjournment. Adjournment was called for, and decided in the negative.]

Mr. Ruggles continued his remarks. We cannot, said he, advance the business of the House by adopting this order. If the choice of Governor be effected or not, we cannot send up a candidate till the Senate is organized.

The first step is to organize; and then to determine whether an election be effected or not. He thought we were beginning at the wrong end, or in the middle. We can do nothing with the votes, till the vacancies in the Senate are filled. We can do nothing till the Senate is organized. We wait for them. A State Legislature, he said, within the last year, was obliged to adjourn because both branches were unable to organize. Will it do for us to proceed alone to business? Mr. R. noticed a curious circumstance in the votes of the House. He thought there could be no *party* about it; but he observed a curious and singular vote of 71 to 73, *on all subjects.* If there were any deviation, it was the deviation of accident. He did not know but that he himself was affected by the general excitement; if he was, he wished to divest himself of party feeling. He found himself in the general current; and to divest himself of all prejudice, he wished time for consideration.

Mr. Ruggles then moved to lay the order upon the table.

The question was then taken for laying the order upon the table—yeas 70—nays 67, and the order was ordered to lie upon the table till to-morrow.—House then adjourned."*

It will not be difficult for the reader to decide on which side of the last question, were both reason and the best of the argument. But little was urged in favor of the *expediency* of the proposition, as the oft repeated anxiety to proceed to business, was never accompanied by any explanation of the method by which business could be either constitutionally come at, or performed, while the Senate was in its then unorganized state,—or rather, while there was no constitutional Senate† to transact

* This debate is extracted entire, as reported by the Portland Gazette—the paper devoted exclusively to the federal party. Of course, the arguments are as strongly stated in favor of that party, as they would reasonably bear.

† The ground taken by the federal party in the debate on postponing the order, was, that there was *no constitutional Senate*, because the Senators elect had not organized. The following extracts from the speeches of some of them, will convince the reader that the House had no right to do any thing with the returns of votes, could they obtain them; as there was no Senate to act with them. And that, for this reason, Mr. Boutelle's order was not designed in reality to *expedite* business, but only as a *false show of an inclination to do business.*

Mr. Bourne, of Kennebunk, (a federalist) said—

"We, Sir, are an organized body—constitutionally organized. The Senate is not yet organized; *and the Senators elect are no more a Senate now, than when they first assembled. They do not constitute a Senate, until they have effected*

business in conjunction with the House. The constitutionality of the proposition need not therefore be considered. If circumstances rendered it inexpedient, and of no avail to the House, the judgment of the public against it is as well grounded, as though it had been altogether unconstitutional. And the determined and relentless spirit by which it was eventually carried through the

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an organization. The constitution requires the Secretary of State to lay the list of votes given for Governor before the two branches of the Legislature on the first Wednesday in January. But, SIR, AS THERE IS NO SENATE, and was not at that time, the votes ought to have been laid before the House of Representatives."

Mr. NORTON, of Canaan, another federalist, said upon the same question, in his speech to the House—"I am opposed, for one, to considering the Senate, in its present condition, *as a coordinate branch of the government.* The order upon your table [introduced by Mr. Boutelle, an active federalist] does not so consider the Senators elect. Why then, Sir, is there impropriety in our asking of them the votes in question? Whose property are the votes given for Governor? They are the joint property of the House and Senate. But, Sir, THERE IS NO SENATE, and the entire property in the votes is vested in the House."

Mr. SCAMMAN, of Saco, an adherent of the federal party, in his speech upon the same subject, said—"THERE IS NO SENATE, and the House ought to be in possession of the votes. The Secretary of State did wrong in placing the votes with the Senators, before they had effected an organization."

To this ground the republican party took no exception. But urged it as a reason conclusive against the propriety of the order. We have only room to extract a portion of one speech from the republican side, touching this point.

Mr. SMITH, of Nobleborough, remarked—"Gentlemen seem variously impressed, in regard to the importance of the order. Some consider it as of grave import, and requiring great deliberation. Others regard it as an every day occurrence—one that any novice in legislation can understand at a single glance of the eye. But, Sir, I am not of the latter number. When I hear one say, the Senate can do so and so—and another declare there is no Senate, I am led to inquire how these arguments bear upon our proceedings. Why send an order, if there be no Senate? I know it is usual to send messages from house to house—and to send for files of papers, &c. But I never heard of sending a message to Senators from this House, before there was a Senate. The gentleman from Saco, says, there is no Senate—and yet we can fill vacancies at the Senate board! The constitution says, that the SENATE shall determine what vacancies exist. If there is meaning in the constitution, it requires what cannot be now done, if the gentleman's argument be true, that there is no Senate.

Again, the constitution says, that the Senate shall judge of the election of their own members. Now there is no Senate, if the gentleman's argument be true, and Senators, not yet organized, and not yet a coordinate branch of the government, cannot determine what vacancies exist, nor the qualifications of those persons who are returned as Senators. Shall this House decide these things for them!

This subject, Sir, requires much attention, and I hope the motion will prevail. But if it does not—if gentlemen will compel us to act—if they are determined to cram this order into us, they have the power. But I ask the many gentlemen—our friends—as members of this House, to accord to me what, upon my honor, I will accord to them in return. I do hope they will not compel members to act, when they have not had opportunity to reflect. If we asked to have the order to be upon the table to a late day in the Session, it would be different. But we ask for only a few hours time, it ought, for courtesy's sake, to be granted. Gentlemen must have strong motives—the purity of their motives must be very strong to refuse so reasonable a request. The more, Sir, I hear said upon this subject, the more I am of the opinion that there is yet no Senate—and that no injury can result from so short a delay as is asked."

House, indicates the degree of party violence in which it had been engendered. It finally passed (Jan. 13) by yeas 73—nays 69.

The length to which the Speaker extended his partiality to his party, through the privilege of appointing committees on the part of the House, was on several occasions the subject of complaint by the opposing or republican party. It is not, however, our intention here, to adopt the impressions of either party against the other, without the evidence upon which they were founded. The appointment of the committee on the returns of votes for Governor, on the part of the House, was what first excited alarm. Of five, selected by the Speaker to compose that committee, *four* were active partizans of the federal, or Huntoon party—and two of them were most especially obnoxious to the observant of both parties, on account of their reputed littleness of mind and destitution of moral restraint, on all matters of a political nature. It had been customary, and not considered unfair, for the Speaker of the House and the President of the Senate, each to appoint a majority of his political friends to each committee, on subjects involving political interests. But the appointment of four out of five, from the ranks of one party, and men, too, so noted for their prejudices and relentless bitterness of feeling towards opponents, as were the four alluded to, had no precedent under the government, and was denominated by the republican members as an act of oppression and violence, in character only with the other unprecedented measures by which they had been attacked, and the intention of the government abused. It was, to say the least, arbitrary, and a departure from all precedents. But from the appointment there was no chance for an appeal.

On the 14th of January, Messrs. Dunlap, Hilton, Hutchinson, Morse, Ingalls, Healey and Hutchins were appointed a committee in the Senate, to examine the returns of votes from the several towns and plantations in the State for Senators, ascertain who were elected, what number of vacancies existed, and who were the constitutional candidates to fill those vacancies. We introduce this fact here to keep even the dates of proceedings in both branches.

The joint committee on the returns of votes for Governor, consisted of the following gentlemen :—On the part

of the Senate, Messrs. Megquier, Gardner and Davee; and on the part of the House, Messrs. Boutelle, Shaw of Wiscasset, Smith of Newfield, Bonney, and Norton. They made a report* to the Senate on the 19th Jan. which was laid on the table, and resumed on the 21st. The document was a remarkable one, and the subject of much debate. The republican members saw in it sufficient to condemn; and ere it had passed a first time in review by either branch, it was attacked and torn in argument without mercy. The federal party, on the other side, appeared to care but little how much it was mangled, provided the election of their candidate, Mr. Huntoon, was effected in the end. They were willing to yield to *either* half of their opponents' arguments; but not to the whole. The latter however, insisted on the whole with equal propriety, and seemed intent on stopping at nothing short of adopting or rejecting throughout, one or the other of the two sets of principles which, as they contended, were arrayed against each other in the report.

Mr. Megquier first moved to amend the report by inserting and counting the votes from the town of Hermon, which the committee had rejected. This was debated through the afternoon, by Messrs. Megquier, Hutchinson, Ingalls, and Dunlap, in support of the motion; and by Messrs. Kingsbery, Phelps, and Hilton against it. In regard to these votes, the report said:—

"The votes from Kermon were rejected, because the return was not attested on the inside by the Town Clerk. It appeared by said return, that three votes were given in said town for Jonathan G. Huntoon, and forty seven for Samuel E. Smith."

The return was attested on the inside by the three Selectmen, and on the outside by both the Selectmen and Town Clerk, in the usual form and terms. This, as was contended, was enough. It was all the constitution required;† and further, the constitution did not direct whether the attestation by the town clerk should be upon the outside, inside, at the top, bottom, corner, or either margin of the return.‡ That, therefore, the return was sufficient. That the only object of an attestation was, to satisfy the Legislature beyond a reasonable doubt, that the return was a true one, and that votes were thrown by the town, as represented. That no doubt could exist as

* See Appendix [A.] † Megquier. ‡ Ingalls, Hutchinson, Megquier.

to Hermon's having thrown the votes returned, and, therefore, they should be counted. That, votes from the town of Mercer,* had been allowed by the committee, although no regular nor original return from that town was before them, and on the ground that there was *other* evidence upon which the committee could reasonably believe that Mercer gave the votes as represented. That this was done upon the principle and in a spirit of just liberality, to come at the true intent of the constitution,—to carry that intent into full effect, and to secure to the citizens at large the benefit of their right of suffrage. The same principle and the same spirit should influence the Senate upon the Hermon votes.

It was further contended, that in regard to the returns from Vinalhaven, Alexander, Charleston, Solon, Cherryfield and Plantation No. 14,† reference was made to the certificate upon the *outside*, to explain, and supply, and even to contradict the certificate of the town officers on the *inside*, in order to save them. That the same saving principle should be applied to the Hermon votes. And why not?

Again, it was contended‡ that the returns from Wales, Dresden, &c. (see Report) were not certified to have been sealed up in open town meeting. Yet this fact was presumed and the neglect of the town officers supplied, upon the principle that there could be no doubt of it, from what appeared. The same charitable construction, or extension of liberal principles, was all that was asked for the votes of Hermon. The principle of supplying omissions or trivial defects on the part of town officers, to save the rights of voters, where no doubt could exist from what appeared as to the truth, should be extended to all or to none of the returns.

On the other side, it was contended‖ that the return of the Hermon votes was not constitutionally attested;—that it was not enough to have the attestation of the town officers on the outside. That former Legislatures had rejected the returns of many towns, because they were not attested;§ that the constitution must be complied with,—that, however unpleasant it might be to reject the

* Mercer gave for Huntoon, 93 votes—for Smith, 44.

† See Report in the Appendix. These several returns gave 253 for Hunton, and 206 for Smith.

‡ Megquier. ‖ Kingsbery. § Hilton and Kingsbery.

votes of any number of citizens, their votes must be rejected if not returned according to law and the constitution; that precedent was in favor of rejecting the Hermon votes; that those who were in favor of admitting them, had been, on other questions, strenuous supporters of precedent, and therefore they should now adhere to it.*

In reply, it was contended,† that no precedent existed for rejecting any return because it was attested on the outside only. That all the precedents referred to, established by former Legislatures, related to returns which had *no* attestation whatever by the town officers,—that such was not the case of the Hermon votes, and therefore the precedents cited would not apply.

The motion was negatived by yeas and nays, as follows:

YEAS.—Messrs. Davee, Dunlap, Hall, Hutchinson, Hutchins, Ingalls, Megquier, Steele.—8.

NAYS.—Drummond, Gardner, Hinds, Hilton, Healey, Kingsbery, Phelps, Morse.—8.

Mr. Megquier then moved to amend the report of the committee, by adding and counting the two votes returned from the town of Kittery.

In regard to these votes, the committee in their report say:—

"In the return of votes from Kittery, which was in the common printed form in other respects, is the following statement, to wit: 'After the above votes were sorted, counted and announced, and before the record was made, two more votes were given for the Hon. Samuel E. Smith.'"

The motion was opposed by Messrs. Phelps and Hilton, and supported by the mover and Mr. Dunlap. Opposed, on the ground that the poll was closed, before the two votes were received, and that the votes of Kittery were not duly returned. It was supported on the ground, that the right of suffrage was sacred; that it could not be denied to any citizen while the list of votes remained unfinished; that the poll was not closed while any man was present to give in his vote, before the return was sealed; that even a vote of the town to close the poll, would not deprive a citizen of his right to vote; that the day for him to vote for State officers was designated by the constitution, and he had, therefore, a constitutional right to select his own time during the day to cast his vote.

* Hilton. † Hutchinson, Ingalls.

After a short discussion, Mr. Kingsbery declared his intention to vote for the motion, and this brought out Mr. Healey, on the same side, after which all argument ceased. The decision was in the affirmative, as follows:

YEAS.—Messrs. Dunlap, Davee, Hutchins, Hutchinson, Hall, Ingalls, Megquier, Steele, Kingsbery, and Healy.—10.

NAYS.—Drummond, Gardner, Hilton, Hinds, Morse, & Phelps.–6.

A motion was then submitted by Mr. Davee, to amend the report by adding and counting the seventeen votes returned as scattering, mentioned in the following clause of the report:—

"Seventeen scattering votes appear by the returns to have been given, but the returns do not designate the persons for whom they were given. The committee did not allow and count them."

The motion was opposed on the ground that it was impossible to determine whether the persons for whom the votes were given, were constitutional candidates or not;* that the names of the persons voted for must be returned, in order to make the return legal; that one of them may be one of the four highest candidates, in case of no election, and be sent up to the Senate as one of the two from whom the Senate must select a Governor.

On the other side, it was contended† that, as the votes had been thrown by legal voters, they should be counted; that although they were not in favor of either of the prominent candidates, yet they were against both, and so far, they should be allowed to weigh; that a fair and liberal construction should be given to the will and intentions of the people, when these could be satisfactorily known; that it was upon this principle that the votes of the citizens of Mercer had been admitted, although not returned exactly in conformity with the constitution; that as every presumption of law was in favor of the actor and of his having exercised rightfully his privileges, until the contrary appears the presumption must be, that the seventeen scattering votes were given for constitutional candidates; that if they could not be understood as being in favor of any particular candidate or candidates, in consequence of the neglect of town officers to return the name or names for which they were given, they could, nevertheless, be so far understood, as that they were given against both the leading candidates; and, therefore, should be so far counted, by being added to the aggregate number given

* Kingsberry, Phelps. † Davee, Hutchinson, Dunlap, Megquier.

by the people. They are the people's votes, and of right should be allowed, to the extent of the will which they clearly express.

The motion was negatived, the eight republican members voting in the affirmative, and the eight federal Senators in the negative.

Mr. Megquier moved to amend the report, by adding the votes of Plantation No. 23. Of these the report says:—"The votes* from Plantation No. 23, in Washington county, were rejected; the return purporting to be a return from the town of No. 23, and being signed as by the Selectmen of No. 23 and Town Clerk."

The chief argument made use of against this motion,† was the admitted fact that there was no such town as No. 23;—and that if there was such a Plantation, it could have no *Selectmen*, nor *Town Clerk*. On the other side,‡ it was contended, that no one could doubt the correctness of the return, in point of fact. No one could doubt that in Plantation No. 23 the alleged number of votes were given, that they were regularly sorted, counted, and sealed up in open town meeting, by the Assessors and Plantation Clerk; and that the mistake in regard to the capacity of the officers making the return, and in regard to the description of the Plantation, was owing entirely to their using a *blank form* designed for an incorporated town, and their omitting, either through mistake or inexperience, to make the blank return conform to the affairs of a *Plantation*. That under such circumstances, with such evidence before them, it would be wrong, unjust, oppressive, and in violation of every principle of liberality, to disfranchise the voters of that Plantation, and to say they should have no voice in the election of Governor. And, more especially would it be iniquitous to do so, in sight of the liberality and accommodation already extended to the voters of Vinalhaven, Alexander, Charleston, Solon, Cherryfield, Plantation No. 14, Bluehill, and Mercer.

The question was decided in the affirmative,—yeas 9, nays 7, Mr. Drummond, of the federal party, voting with the eight republican members against the other seven federal members.

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* One for Hunton, sixteen for Smith.

† Phelps, Hilton. ‡ Hutchinson, Ingalls, Dwinel.

Mr. Dunlap next moved to add and count in the report the votes of Baileyville.* The report says :—

"The votes from the town of Baileyville were rejected; the return from said town being certified on the inside, by Daniel Ford, as town clerk, and certified on the outside, by Seth E. Hutchinson, as clerk of said town."

The motion was opposed in debate, until the adjournment. On the next day, the 23d of January, Mr. Dunlap moved to commit the report to a select committee.—After a short debate, the motion was so modified as to commit only that part which related to the return of votes from Baileyville, with instructions for the committtee to lay before the Senate the evidence, in the possession of the Senate, to show who was the town clerk of Baileyville. Mr. D. said his object was to clear up all existing doubt in regard to this return. There is evidence in the return of votes for senators from Baileyville, which will satisfactorily show who was the legal town clerk, and that one of the certifying officers upon the return was the man.

The motion was opposed† on the ground that it would not be *parliamentary* to refer the report of a joint committee to a select committee of one branch of the Legislature! that if committed at all, it should be committed to the same joint committee.

In reply, it was contended‡ to be strictly parliamentary to commit a portion of the report as proposed; that it was entirely under the control of the Senate now;—that if any explanation could be given of the return from Baileyville, the Senate should know it and act understandingly;—that this course of proceeding was due to themselves as Senators, and it was due to the voters of Baileyville;—that the object was not delay, but information; that to refer it to a joint committee, it must be sent back to the House to be acted upon there, and delay would be unavoidable; that if it was unparliamentary to commit it as proposed, it had better be done than to preclude the truth, and disfranchise any portion of the people; that it was only the *truth* that was sought, and when it could be so easily obtained, the shadow of form ought not to preclude it. But the motion was negatived.

YEAS—Dunlap, Davee, Hall, Hutchinson, Hutchins, Ingalls, Megquier, Steele—8.

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*11 for Smith, 0 for Huntoon.

† Kingsbery, Phelps, Hilton. ‡ Megquier, Hutchinson, Dunlap, Ingalls.

NAYS—Drummond Gardner, Headley, Hilton, Hinds, Kingsbery, Phelps, Morse—8.

The object of treating the voters of Baileyville with the liberality extended to other towns, whose returns were no less defective, was not abandoned here. Mr. Megquier, after the last vote had been declared, moved "that the chairman of the committee on the returns of votes for Senators, be requested to read to the board the return of votes for Senators from the town of Baileyville, to show who was the clerk of said town."

The only argument offered in opposition to this motion was, that it was unparliamentary to read such evidence in debate*—that the report should be recommitted, or no new light could properly be admitted upon the subject of it.

In reply it was urged,† that it was altogether inexpedient to waste the time of recommitting the report, when the evidence asked was contained in a single line of a document already in the possession of the Senate, it being in the hands of the chairman of the committee on senatorial returns, who could read in a minute all that was required;—that if the objection to the return of votes from Baileyville was, that two persons had certified as town clerks—one being, probably, clerk *pro tem* in the absence of the other, the legal clerk;—that if gentlemen who make this objection, would permit the other return from the same town to be read, all doubts as to who was the town clerk, would be dissipated; that, if they would not do this, it was asked what evidence there was, that Daniel Ford, the certifying clerk on the inside, is not clerk of Baileyville? It was contended, that there was no such evidence, and therefore the Senate was bound to presume him to be the clerk, as they did every other person who had certified as clerk in the returns from other towns;—that the evidence on the *outside* of the return, where another person had certified as town clerk, could not be taken as evidence to disprove Ford's being town clerk, upon the principle which was adopted in the case of the Hermon votes, wherein it was decided that the return upon the *outside* is not evidence to control the *inside*: It was contended that the Senate ought to make the principles which they adopt, square with each other;—that the Senate ought to be uniform in their principles, apply them throughout, or reject them throughout.

* Kingsbery, Hilton. † Hutchinson, Ingalls, Megquier.

But this motion was rejected! Messrs. Davee, Dunlap, Hall, Hutchinson, Hutchins, Ingalls, Megquier, and Steele—8, voting in favor of it; and Messrs. Drummond, Gardner, Hilton, Hinds, Healey, Kingsbery, Morse, and Phelps—8, voting against it!

The next question was on the acceptance of the report. Here the ground, *pro* and *con*, was principally gone over again, in regard to each set of votes that had been in any degree questioned. It was apparent, however, that the supporters of Mr. Huntoon were fully determined to admit no more returns, as his election would thereby be defeated. The admission of almost any of the returns that had been rejected, would have defeated his election. They saw this, and there they halted. As we shall recapitulate a little of this subject in the succeeding chapter, the state of the votes on this final question of accepting the report will only need to be added here. On accepting, without any further amendments or additions,—

YEAS.—Messrs. Hinds, Morse, Kingsbury, Gardner, Hilton, Healey, Drummond, Phelps.—8.

NAYS.—Dunlap, Ingalls, Megquier, Hutchinson, Steele, Hall, Hutchings, Davee.—8.

The report was thus rejected by the Senate.

CHAPTER VIII.

Report on the votes for Governer in the House—Its inconsistencies—Reflections.

The report of the committee on the returns of votes for Governor, was now sent to the House of Representatives. On the 27th of January it was called up, and Mr. Boutelle moved to accept it, with the amendments made by the Senate, (they being the addition of the two Kittery votes and of the votes of Plantation No. 23.) This motion was divided, and the amendments only were adopted first. Mr. Ruggles then moved to add the vote of Hermon. Mr. Boutelle inquired if the Hermon votes had not already been adopted in the amendments made by the Senate and just now accepted by the House? The speaker replied

in the negative. Mr. Ruggles then remarked, that as the gentleman from Waterville was on the committee that made the report, it must be presumed he is acquainted with the principle which the Hermon votes involve; and, as that gentleman presumed they had been adopted by the Senate, and that his motion to adopt the amendments of the Senate had embraced the Hermon votes, it was believed Mr. Boutelle must now be in favor of the Herman votes.

After some little discussion, in which the effect of adopting the Hermon votes upon the election of Mr. Huntoon was explained sufficiently for all the federal party to understand their necessities, the motion was *rejected* by yeas and nays, as follows :—

YEAS.—*York County.*—Wedgwood, Spinney, Bradbury, Wentworth,* N. Clark, Lord, Kezer, Goodwin 3d, Chase.—9.†

Cumberland.—Larrabee, Rideout, Wheeler, Woodbury, Strout, Morrell, Mann, Latham, Stinchfield, Waterman, Jordan, Fogg, Shaw, Bishop.—14.

Lincoln.—Linnen, Smith, Watts, Ruggles, Lermond, Andrews, Thomes.—7.

Hancock.—Thomas, Burnham.—2.

Washington.—Chandler, Farnsworth.—2.

Kennebec.—Johnson, Howard, White, Morse, Bridgham.—5

Oxford.—Hutchinson, Frost, Howard, Small, Barnard, Tobin, Perry, Cole, Bonney, Nevers, Howe, CHARLES.‡—12

Somerset.—Bartlett, Bean, Patterson.—3.

Penobscot.—Kelsey, Bartlett, Emery, Lowney.—4.

Waldo.—Richardson, Lambert, Rowe, Trafton, Small, Snow, Gliddon, Lemau, Knowlton, Alden, Swett, Carr.—12.‖ TOTAL 70

NAYS.—*York County.*—Goodenow, Shapleigh, Deshon, Bourne, Stone, Hill, Sanborn, Smith, Seamman, Powers, Gilman.—11.

Cumberland.—Curtis, Willet, Mitchell, Wells, Sylvester, Johnson, Blake, Adams, Swan, Dodge, Waterman.—11.

Lincoln.—Macgoun, Hatch, Jaques, McKown, Baxter, Sewall, Trask, Smith, Tibbetts, Myrick, Perkins, Shaw, Miller, Peaslee.—14 §

Hancock.—Pond, Walker, Allen, Johnson, Crabtree, Chamberlain.¶—6.

Washington.—Folsom, Mowry, Butterfield, Hamlin, Freeman.—5.

Kennebec.—Severance, French, Weeks, Ames, Adams, Clark.

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* This name is printed Lee page 31, J. T. Chase, by mistake.

† Robert's exclusion altered the republican vote of this county from what it is on page 31.

‡ Charles got into the republican ranks, and varied the vote of this county from what it is on p. 31.

‖ Mr. Goddard's absence varied the vote of Waldo, from what it is p. 31

§ Patterson was absent.

¶ Mr. C's name is omitted among the nays, p. 31, through mistake, although included in the aggregate.

M'Gaffey, Scamman, Spaulding, Hoyt, Merrill, Robinson, Boutelle, Wood.*—14.

Oxford—Parsons, Barrell.—2.

Somerset.—Caldwell, Norton, Hutchins, Allen, Bartlett, Thurston, Greaton, Searle.—8.

Penobscot.—Kent, Clark, Fowler.—3. TOTAL 74.

From the preceding votes, the reader will perceive that no alteration had taken place since the commencement of the session, in the ranks of either party, excepting in the change of sides by one individual.

A motion was next made by Mr. Smith, of Nobleboro', to add the seventeen scattering votes given for Governor, and reported by the committee, as rejected. This motion was advocated by the mover, Mr. Ruggles, and Dr. Burnham. The course of the federal party in regard to the report, appeared to be so well concerted and understood, as to need no argument. They voted the motion down without a word of argument against it. Yeas 69—Nays 73.

The question on accepting the report of the committee as amended in the Senate, was then taken by yeas and nays, and decided in the affirmative. Yeas 75—Nays 69.†

Various reflections naturally crowd themselves upon the mind of the reader here. It cannot be concealed, that the manner of treating the returns of different towns, the great and singular partiality shown to those of some towns, and the striking hostility manifested towards those of others, are too truly calculated to lessen the reputation, and to degrade the character of the government of Maine, in the estimation of all under whose observation those proceedings came. The extent of party spirit and violence, indicated in the favoritism shown to such returns as contained a majority for Mr. Huntoon, and the rejection of such as contained a majority for Mr. Smith, cannot be said to have a parallel in the proceedings of any other legislative body. The better to illustrate the truth of this remark, and to exhibit the inconsistency of the Re-

* A member from Winthrop, elected, since the commencement of the session, in place of T. Fillebrown.

† Every man's vote was the same as on the preceding question, excepting Morse's; who voted *then* with the republicans, but *now* with the federalists; and Chamberlain's, who voted *now* with the republicans, but on the former question with the federalists. Patterson, of Lincoln, was also present now and voted with the federalists, making 75. Tobin, of Oxford, who voted with republicans, on former questions, was absent, and Goddard was also still absent from indisposition, which reduced the number to 69.

port in a shorter view, portions of it are here presented

"The return of Hermon was attested on the *outside* by the town clerk, but not on the *inside*. These votes were rejected, say the committee, "because the return was not attested on the *inside*,"—the *outside* could not be taken to help it—3 for Hunton, 17 for Smith. Majority for S. 14.

"The returns from Vinalhaven, &c. bear date on the *inside* as of September, A. D. 1809, and on the *outside* as of September, A. D. 1820; and the votes from said towns and plantations were allowed and counted, viz: for Jonathan G. Hunton, 253; for Samuel E. Smith, 206." Majority for Hunton, 47.

It can hardly be reconciled to the understanding of an honest mind, how the *outside* of one return could be taken to supply the defect of the *inside*, and the *inside* of the other be wholly refused the aid, which its outside was no less able to supply than was the outside in the other case? It may be a specimen of impartial and honest legislation. But it will be difficult to make the impartial and honest so understand it. By rejecting both returns, Mr. H. would have lost 256 votes, and Mr. S. 253—a difference of *three* against the latter. By accepting *both*, Mr. H. would gain only three votes more than Mr. S. But by rejecting the one, and accepting the other, after the manner of the Legislature, Mr. H is made to obtain a majority of *forty-seven votes*, instead of only *three*, over Mr. Smith—*a number larger by* SEVENTEEN VOTES, *than the majority which actually elected him*, according to the calculation of his own partizans, and the report as amended!*

"The votes from the town of Baileyville were rejected: the return being certified on the inside by Daniel Ford, as town clerk, and certified on the outside, by Seth E. Hutchinson, as clerk of said town. It appeared by said return that fourteen votes were given in said town for Samuel E. Smith," and none for Mr. Huntoon.

"The return from Bluehill was certified on the *outside* by the Selectmen, but *not* attested on the outside by the town clerk; but the votes from that town were allowed and counted, viz: for Jonathan G. Hunton 86, for Samuel E. Smith, 33." Maj. for H. 53.

Again is it difficult to reconcile the principles upon which the votes of the one of these towns were rejected, and the other admitted their full weight in the election.

* After adding the votes of Kittery and Plantation No. 23, 23,253 were necessary for a choice, and Mr. H. with all allowed him, had but 23,316—a majority of only 30. So on the Hermon votes Mr. Huntoon's election turned.

The character of the return upon the *outside* of one was regarded of no importance to affect the return on the *inside* of it; but in the other case, the character of the return upon the *outside* was admitted to destroy the return on the *inside!*

"The votes from Hermon were rejected, because the return was not attested on the inside, though it was on the outside, by the town clerk. It appeared by said return, that three votes were given in said town for Mr. Hunton, and forty seven for Mr. Smith." Majority of 44 for Smith.

"The votes from Mercer were admitted and counted, although no return was made, except a document purporting to be a *copy* of the original return, said to have been lost. It appeared by this, that in said town, 93 votes were given for Hunton, and 44 for Smith." Majority for H. 49.

It cannot be necessary to pursue this subject further, in order to exhibit the true character of this report. It cannot escape the observation of any reader, that every defective return that returned *a majority for Mr. Huntoon*, was admitted, notwithstanding its defects; while every defective return that shewed a majority against him, and for Mr. Smith, was rejected, however trivial the defect, with the exception of the two votes from Kittery, and the votes of Plantation No. 23, added by the Senate, which were so small as not to vary the result. This uniformity, so studied and unjust in its operations, betrays a design highly derogatory to the public character of a Legislative body. It is calculated to destroy the confidence of the people in their legislators, and to create distrust abroad excessively prejudicial to the character of the State. No propitiation can undo the impression which such striking injustice and barefaced inconsistency, leave upon the mind of the observer. It will require the best endeavors of the people, for perhaps a long time, to make it known equally far, that they do not justify and cannot approve it. Although the corrective power is in and with them, the exercise of it must necessarily be tardy. In the mean time, our people must suffer beyond measure in their character, and be stigmatized, perhaps for want of probity, permanency of principle, good government, and those primary virtues, essential to public security and happiness. To avoid this deep humiliation as much as possible, the earliest occasion must be improved to vindicate their pre-existing usages and the salutary injunctions of the con-

stitution, by wiping from the records of state, or explicitly disowning, proceedings so obnoxious to the spirit and intentions of the Constitution, which should not be undermined nor contaminated, to subserve the purposes, or to vindicate the measures of any party, by whatever name known.

CHAPTER IX.

Renewal of Mr. Roberts's claim.—Its final disposition.—Second Order of Mr. Boutelle.

On the fifteenth day of the session, (20th Jan.) an order was introduced, accompanied by the memorial of Andrew Roberts, to restore him to his seat in the House, subject to any further investigation that might be had in his case by the committee on contested elections. The memorial was supported by the depositions of *fifteen* citizens of Waterborough, *including the depositions of the other two Selectmen*, proving incontestibly, that there was a regular and legal adjournment of the town meeting in Waterborough, from the 14th to the 15th of September, by a vote of the town, *on a motion regularly submitted, put, declared, and not doubted.*

It was now urged that he had made out a *prima facie* evidence of his right to a seat, and that he ought, therefore, to be admitted to hold it, in the same manner and upon the same principle that other members, whose seats were contested, and who had made out only a *prima facie* case, held theirs; that is, until the committee on contested elections should fully investigate and report upon his case, and the House should, on a view of the whole ground, solemnly decide against his right.

Considerable debate ensued, growing out of various motions made to commit and to amend the order, and to adjourn the House. Mr. Adams of Portland moved to commit the order, memorial and depositions, to the committee on contested elections. The effect of this was, to deprive Mr. R. of his seat until the committee might see fit to report on his case. The motion was opposed by the republican members, and supported by the mover,

Messrs. Kent, Bourne, Norton, &c. Mr. Ruggles moved an amendment to the motion to commit, which was in effect to allow Roberts his seat upon the evidence he had produced, until that should be rebutted by the committee on contested elections. Various questions of order now arose, in deciding upon which, the Speaker very evidently felt great embarrassment,* as Mr. Ruggles's acquaintance with questions of order enabled him to outgeneral both the Speaker and the adverse party. Mr. Kent thereupon moved for an adjournment. This was a signal of distress to the federal party. It was at war with all their previous professions of a desire to avoid delay. As his party was somewhat disconcerted, the motion was negatived by a vote of 69 to 69, the Speaker voting for the adjournment! A little more discussion ensued, upon Mr. Ruggles's amendment to the motion to commit, when the motion to adjourn was renewed and negatived by a vote of 71 to 71—the Speaker and the whole federal party again voting for the adjournment! These were the first and, we believe, the only motions made by any federalist during the session, which were not carried off hand at the first trial!

Mr. Norton now offered several counter depositions, to be read from the chair. To these, objections were made on the ground that Mr. Roberts had not been notified of the taking of them; and further, on the ground that it did not properly belong to the House to enter into evidence to disprove the *prima facie* evidence of any member's right to a seat, but to the committee on elections; that the House did not so treat the *prima facie* case of any other member, but allowed him a seat upon it, and deferred all decision in regard to it, until the committee on elections had reported upon it. And further, it was contended, that Mr. R had never been served with any remonstrance, and had no knowledge that an adverse party, excepting what existed in the House, was to appear against him, and therefore it was improper and unfair to read them.

The impropriety of admitting these depositions could not be urged on stronger grounds. They were, nevertheless, *admitted by the Speaker and read to the House!*

* In confirmation of this, see either the Eastern Argus or Portland Gazette, of Jan. 22, 1830.

These counter depositions amounted to twelve in all; but not one of the deponents undertook to testify that the vote to adjourn the meeting (as testified by the other fifteen) was not passed. They only testified, that *they did not know of it.* Not one testified that a previous vote to dissolve the meeting, or to adjourn it without day, was passed or declared; yet this was the only point at issue.

A motion to adjourn until the afternoon was then agreed to. In the afternoon the House met, but adjourned immediately. On the next day, the subject of Mr. Ruggles's motion to amend was again debated. In contempt of all usage, Mr Smith of Newfield moved to introduce before the House two witnesses for *oral examination*, against Mr. Roberts's claim! Even this motion found *one* advocate, Doctor Shaw of Wiscasset! The strong light, however, in which its impropriety and disorganizing tendency were set forth by the advocates of Mr. Roberts's rights, effected a withdrawal of the motion, without a decision of the House upon it. The motion of Mr. Ruggles to amend, was then negatived—Yeas 69—Nays 74.* The motion to commit was then carried, without a division of the House.

The delay of the committee on contested elections on Mr. Roberts's case, appeared to be strikingly inconsistent with their readiness to take it up,† urged in debate. It became, after many days silence, a subject of complaint with Mr. Roberts and his friends. An order was consequently introduced into the House, on the morning of the 28th of January instructing the committee to report upon it, so that it might be acted upon by the House on that afternoon. No report was made, however, until the third of February! Two reports were then made; one signed by a majority of the committee, the three federal members, to wit, Messrs. Clark,‡ of Hallowell, Bourne, of Kennebunk, and Norton, of Canaan, against Mr. Roberts's right; the other, signed by the two republican

* The Speaker voted with his party upon all questions.

† Mr. Bourne, of the committee on contested elections, supported the motion to adjourn. His speech is reported in the Portland Gazette of Jan. 22, as follows: "Mr. Bourne hoped the House would adjourn. He was anxious that Mr. Roberts should have his seat, if he was entitled to it; *the committee*, he said, *would have a meeting this afternoon, and Mr. R. could present his claims and have them with a forthwith.*" ‖

‡ The same for whom Mr. King has subsequently been removed from the office of Commissioner on the Public Buildings, by Mr. Hunt[illegible].

members, Messrs. Clark, of Limington, and Cole, of Paris, in favor of Mr. R's. right to a seat.

A motion was made by Mr. Swan, to print both reports, as is usual in like cases. Messrs. *Boutelle*, *Bourne*, *Norton* and *Clark*, opposed printing the report of the minority! But the motion to print both, prevailed by a considerable majority. The subject was not resumed again until the 5th, when it was again postponed until the 9th of February. On that day a convention of both houses prevented its being acted upon; on the next it was partially debated. On the 11th, the report of the majority, advocated by Messrs. Pond of Bucksport, and Clark of Hallowell,* and opposed by Messrs. Ruggles, A. Smith, and Knowlton, was carried by a vote of 72 to 62.† Thus, after a delay of 26 days, the claims of Mr. Roberts were finally disposed of! It cannot be denied that, from the beginning, through every stage of action and delay—studied *delay* most apparently—he had justice, precedent and the best of argument, on his side. And it must be conceded, that he and his friends conducted themselves with respectful submission, decorum and prudence, in every stage, without relaxing any honest opinion, or yielding but to an overpowering force, which was governed by no fixed rule or principle, and having in view no other aim but the ascendancy of one party, and the injury of the party opposed to it From the facts detailed, every reader can make out his own argument and draw his own conclusions, and at last decide, who was in the wrong, and which party best deserves his future support.

On Friday, the 29th of Jan. Mr. Boutelle introduced a short order with a long preamble, of quite a novel and complicated character. The order without the preamble, which was aptly denominated in debate "a head-dress of many colors," was as follows:—

"ORDERED, That a message be sent to the Senate requesting such Senators as have been elected, to meet the members of this House, in the hall of the House of Representatives, on Monday next at ten o'clock, and elect by joint ballot the number of Senators required."

The Senate at this time had not informed the House what number, nor that any vacancies existed in the Sen-

* Both of these gentlemen have been uniformly avowed federalists.

† Previous to this period of the Session, several members of the republican party had obtained leave of absence, and others were not in their seats.

ate: nor had the Senate ascertained what, nor whether any, existed. On the Tuesday preceding Mr. Boutelle's order, the committee on senatorial votes made a report to the Senate, that two vacancies only existed in that branch. Part of it report had not been accepted only in part, and it remained a question in the Senate still, whether two, or four vacancies existed, and who were the constitutional candidates to fill them.

Under these circumstances, Mr. Smith of Nobleboro', moved to postpone Mr. B's. order, until the following Monday, and to print 300 copies of it for the use of the members. He asked an opportunity for consideration:—a time to consult the constitution. He said such an order with such a preamble, and with so many new doctrines—an order, the like of which had never before been heard of in this House, ought not to be passed without a minute examination. He was not prepared to say immediately, it was unconstitutional; but he was prepared to say, that the principle inculcated was new to him, and unprecedented in the House.*"

The motion was negatived—yeas 69, nays 74,—the whole federal party in the negative. Mr. Kent, of Bangor, a federalist, then moved that the next day at ten o'clock be assigned for consideration of the order; which was carried. On the next day the order was resumed, and opposed by the republican members, on the ground that the House had no constitutional power to take cognizance of any vacancies in the Senate, until officially informed of them by the Senate, and of the constitutional candidates to fill them;—that the proposition to form a convention, could only originate with the Senate—had never before proceeded from the House, and could not be acted upon, but by a concurring vote of the Senate;—that as the Senate had determined nothing in regard to the vacancies, or the constitutional candidates to fill them, nothing in regard to either could be constitutionally done by the House.† The order was supported by Messrs. Boutelle, and Freeman,‖ of Cherryfield.—Before the question was put, Mr. Ruggles moved to strike out the preamble; this motion was negatived after much debate, by a vote of 67 to 73. Various ob-

* See report in Portland Gazette of February 2.

† These grounds were subsequently established most fully by the decision of the Judges of the Supreme Court. See Appendix.

‖ Messrs. a federalist.

jections were then urged against the preamble and order, including its *unconstitutionality*—its *impropriety*—its *inefficacy*, and its *inexpediency*. But it was finally carried by yeas and nays, as follows:

YEAS.—*York County.*—Goodenow, Shapleigh, Bourne, Stone, Hill, Sanborn, G. E. Smith, Scamman, Powers, Gilman.—10.

Cumberland.—Curtis, Willett, Mitchell, Wells, Sylvester, Johnson, Blake, Adams, Swan, Dodge, Waterman.—11.

Lincoln.—Magoun, Hatch, Jaques, McGown, Baxter, Sewall, Trask, J. Smith, Myrick, Perkins, Shaw, Patterson, Miller, Peaslee.—14.

Hancock.—Pond, Walker, Allen, Johnson, Chamberlain, Crabtree.—6.

Washington.—Folsom, Mowry, Butterfield, Hamlin, Freeman.—5.

Kennebec.—Severance, French, Weeks, Ames, Adams, Clark, M'Gaffey, Scamman, Spaulding, Hoyt, Merrill, Robinson, Boutelle, Wood, Morse.—15.

Oxford.—Parsons, Barrell.—2.

Somerset.—Caldwell, Norton, Hutchins, Allen, J. Bartlett, Thurston, Greaton, Searle.—8.

Penobscot.—Kent, Clark, Fowler.—3. TOTAL 74.

NAYS.—*York.*—Wedgwood, Spinney, Bradbury, Wentworth, Clark, Lord, Kezer, Goodwin.—8.*

Cumberland.—Larrabee, Rideout, Wheeler, Woodbury, Morrell, Mann, Latham, Stinchfield, Waterman, Jordan, Shaw, Bishop.—12.†

Lincoln.—Linnen, Smith, Watts, Ruggles, Lermond, Andrews, Thomas.—7.

Hancock.—Thomas, Burnham.—2.

Washington.—Chandler, Farnsworth.—2.

Kennebec.—Johnson, Howard, White, Bridgham.—4‡.

Oxford.—Hutchinson, Frost, Howard, Small, Barnard, Tobin, Perry, Cole, Bonney, Nevers, Howe.—11.

Somerset.—Bartlett, Bean, Patterson.—3.

Penobscot.—Kelsey, R. Bartlett, Emery, Lowney.—4.

Waldo.—Richardson, Lambert, Rowe, Trafton, Small, Snow, Glidden, Lennan, Knowlton, Alden, Swett, Carr.—12.‖ TOTAL 65.

On the Monday following, Mr. SMITH, of Nobleboro', introduced the following preamble and order:

"Whereas an order has passed this House, directing a message to be sent to the Senate, requesting such Senators as have been duly elected to meet the members of this House in the hall of the House of Representatives, this day at half past two o'clock in the afternoon, and elect by joint ballot, the number of Senators required—And whereas a novel and important question has arisen, whether such convention can be formed and proceed to the business expressed in said message, until the deficiencies which exist at that board have been by them determined, and the constitutional candidates therefor designated—Therefore

ORDERED, That the Justices of the Supreme Judicial Court be

* Mr. Cease was absent. † Messrs. Strout and Fogg were absent.
‡ Morse voted with the federal party.
‖ Mr. Goddard was still absent, from indisposition.

requested, pursuant to the provisions of the Constitution, to give their opinion upon the following questions, viz:

1st. Can a convention of the members of the House of Representatives, and *such Senators* as are elected, be constitutionally formed, without a concurrence of a majority of said Senators, if so—

2ndly. Has such a convention the power of designating what deficiencies exist in the Senate, until the Senate shall first have determined the elections of its own members, and thereby ascertained the deficiencies and designated the constitutional candidates for supplying said deficiencies?

3d. Can such convention, including but one half the number of Senators elected, legally proceed to the business of supplying deficiencies, not ascertained by the Senate, by the election of persons not designated by the Senate as the constitutional candidates therefor, provided that board do not agree to such convention and the President thereof should decline attending the same?"

On introducing this order, Mr. Smith remarked, that he thought the order passed on Saturday to be *unconstitutional*, as well as *without a precedent*. Other gentlemen might honestly entertain a contrary opinion. If, however, they had no fears for the soundness of their opinions, he presumed they would not shrink from having them submitted to the tribunal which possessed the competent powers to decide upon the subject. It has been admitted to be a subject of serious and vital importance; and we ought to be willing to be put right, if we are now wrong, as he believed we were.

Some debate ensued. Mr. Kent* moved to commit the preamble and order to a select committee. This was opposed by the republican members, and advocated by Messrs. Kent, Shaw, of Wiscasset, Shapleigh, and Bourne, and was carried, 66 in the affirmative, 64 in the negative. Messrs. *Kent*. *Clark*, of H., *Boutelle*,‡ Ruggles, and A. Smith,† were appointed this committee. The time for holding the convention was consequently postponed until the next day, (Tuesday) at eleven o'clock.

On Tuesday, the three federal members of the last named committee reported *against* submitting the questions for the opinion of the Supreme Court.§ Mr.

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* Always a federalist. † Two republicans. ‡ Three federalists.

§ The report said—"Your committee have no doubt that the House has a constitutional right to send such a message, and that the facts recited in the preamble to said order, fully justify it in the course pursued—and that it is unnecessary and inexpedient to protract the session already delayed beyond precedent, by waiting for an opinion on points which your committee consider plain and indisputable." The authors of this report—being three *professed lawyers*, must feel no small humiliation on turning from the decision of the Judges upon these very points, back to their own opinion set forth in this report.

Ruggles thereupon moved to amend the report, by adding the following interrogatory, for the opinion of the Court, viz :

"Can the members of the House of Representatives and the members of the Senate, in convention, constitutionally designate who are the constitutional candidates to supply such deficiencies, from the evidence either of a report of the Governor and Council, or a report of a Committee of the Senate, *not accepted or agreed to by the Senate;* or from any other evidence than a vote of the Senate declaring who are the constitutional candidates?"

Mr. R. said his object was not delay. It was only to have the House proceed constitutionally. He believed they were about to violate the constitution, and break down the independence of the Senate, by electing persons to take seats in it, who never have been adjudged by that branch to be constitutional candidates therefor. It was an opinion honestly entertained by himself and many others, and instead of losing time he thought the House would gain time by obtaining the opinion of the Court. It was a serious measure that contemplated setting aside *all* precedent; and every rational doubt in regard to it should be removed ere it was adopted.—This course was dictated by every principle of sound policy, of economy, of regard for the safety of the constitution and for the character of the legislature.

Mr. Norton moved that both the report and Mr. R's. amendment, lay upon the table. This was opposed by Mr. A. Smith, and Ruggles; and supported by Mr. Clark, of H., and Norton, and carried by yeas 75—nays 69—the members of the federal party going in a solid phalanx for it, and the republican members as unitedly against it.

The Speaker read about this time, an informal reply to the order of the House proposing a convention, from the eight federal Senators, saying they would meet the members of the House of Representatives, as had been proposed, at 11 o'clock of that forenoon. Shortly afterwards they* appeared for that purpose in the hall of the House of Representatives. But before entering upon the doings of the Convention, some proceedings in the Senate deserve our notice.

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*Messrs. Kingsbery, Drummond, Hilton, Healy, Hinds, Morse, Phelps, Gardner.

CHAPTER X.

Senatorial Votes—Constitutional Questions—Secession of the eight federal Senators from the Senate.

On the 26th of January, the committee on senatorial votes reported, that Messrs. Dunlap, Ingalls, and Mc-quier, of Cumberland, Steele, and Hutchinson, of Oxford, Gardner, Hilton, Healy, and Drummond, of Lincoln, Hall, and Hutchins, Jr. of Hancock and Waldo, Kingsbery, Morse, and Hinds, of Kennebec, Phelps of Somerset, and Davee, of Penobscot, had been duly elected by the people. The report shew that the senatorial votes from the town of Hermon, given for Mr. Phelps, were in the return *defective* in the same manner as was the return of votes for Governor, from that town. The committee, however, counted them. And, on motion of Mr. Kingsbery, the report was divided and so much of it as related to the elections of the several individuals named, was adopted. It is to be remarked, that the Hermon votes for Senator, met with no opposition from any of those who opposed the counting of the Hermon votes for Governor, but were allowed and counted for Mr. Phelps!*

The report also declared Benjamin Pike,† and Abijah Usher, Jr ‡ to have been elected Senators from the county of York, and that one vacancy of Senator existed in that county:—and that Moses Swett and James Goodwin received the next highest number of votes, and were the constitutional candidates to fill that vacancy. Both of these last named gentlemen were known to be republicans. It was soon discovered, that it would be an unpleasant task, for the forced majority of federalists in the House, to elect either one or the other of these republicans, to fill the vacancy in the Senate. But the report also shew another vacancy in Washington District, where one of the constitutional candidates was known to belong to the federal party. So that, by filling the two vacancies, the balance of members in the two parties did not appear likely to be altered.

* Perhaps this fact will convince the reader, how little the federalists were opposed in principle to the Hermon votes. When the Hermon votes were for Mr. *Phelps*, one of their own men, they were unhesitatingly *counted*. When *against* Mr. Huntoon, their man, these votes were violently *rejected!*

† A republican ‡ A federalist

The motion of Mr. Kingsbery to divide the report operated to effect the acceptance of only a part of it. A motion* was then made by Mr. Megquier, to accept so much of it as related to the election of Mr. Pike. This was opposed, first on the ground that two votes from Kittery were illegal, and that without these, Mr. P. was not elected. These Kittery votes were given and returned precisely as were the two votes from the same town given for Governor,†—excepting only that the certificate of the Selectmen, that they were given before the other votes for Senators had been announced, &c. was made *under* their certificate of those other votes; whereas in the votes for Governor, the selectmen's explanation and certificate of them was placed *over* their certificate of the other votes. A common blank form was used in both cases. A place is printed upon one of the margins of these forms, with the words "selectmen" and "town clerk" under each other, over against which the town officers as usual signed their names—which completed the certificate of the legality of the list of votes made above their signatures. The number of candidates for Governor being only two, sufficient room on the blank was furnished, to give the list of votes for Governor and to add the explanation given to the *two votes*, without encroaching upon the space provided for the signatures of the certifying officers. But the number of candidates for Senators being *six*, there was not a convenient space for the two votes in question to be added, and a certificate of explanation of them likewise, ABOVE *the space appropriated for the signatures of the town officers.* Hence, the two votes were put *below* the other certificate, and another certificate appended to them—that all might be properly certified. It was this accidental and unimportant difference only, that was urged against these two senatorial votes, to distinguish them from the two given at the same time, by the same voters, for Governor,—which had been already accepted and counted! It was, however, further urged, that there was an error in the return of Buxton, of one vote counted for Pike, which should have been counted against him. But the Selectmen of Buxton could not testify to any error. These points were de-

* Messrs. Kingsbery, Phelps, Drummond, and Hilton opposed this motion.

† Which were accepted and counted, Mr. Kingsbery voting in favor of them. See page 60.

bated through the day. On the next morning, Mr. Megquier withdrew his motion of yesterday, and moved to *reject* so much of the report as related to the election of Mr. Pike. This motion was decided in the negative, the eight republicans voting for it, and the eight federalists against it.

Then Mr. Megquier contended, that a vote *not* to reject that part of the report, was tantamount to accepting it; and moved that Mr. Pike be notified of his election and requested to take his seat at the board. The eight federal members saw with astonishment now, the effect of their last vote; and that they themselves had virtually voted to declare Mr. Pike elected by the people. Mr. Kingsbery then rose and insisted that the last question on which the Senate had voted, was not correctly read by the President. To remove all cause of complaint, the republican members (foolishly enough to be sure) consented to a reconsideration of it! Thereupon, Mr. Pike was again deprived of the election which the people of York county had made, and the committee of the Senate had unequivocally reported. Mr. Kingsbery moved to accept so much of the report as related to the election of Abijah Usher, Junior, the federal candidate, whose election had been reported. This was objected to on the ground that a part of the votes counted for Abijah Usher, Jr. were returned for Abijah Usher, who also lived in the same county. This objection was safe and sufficient, notwithstanding it might be inferred from circumstances, that these votes for Abijah Usher the elder, were intended for Abijah Usher, Jr. However, the candidate of the republican party, Mr. Pike, had been so unfairly refused his seat, by the federal Senators, though elected beyond doubt by the will and votes of the people, that almost any circumstance was enough to justify the republican members in rejecting the claims set up by the federal members for their partizan. The vote on Mr. K's. motion was consequently lost, the Senate being equally divided upon it. Thus then, were the parties continued exactly balanced. In the afternoon, Mr. Hilton, a *federalist*, moved to accept Mr. Pike's election! But when the question was taken he voted against his own motion! and it was lost as follows:—

YEAS.—Davee, Dunlap, Hutchinson, Hutchins, Hall, Ingalls, Megquier, Steele.—8.

NAYS.—Drummond, *Hilton*, Hinds, Healey, Gardner, Kingsbery, Morse, Phelps.—8.

On Monday, the 1st of February, Mr. Megquier moved a resolve to accept all that part of the report of the committee on senatorial votes, which had not been accepted. By this, Messrs. Pike and Usher would have been declared elected, and one vacancy in York, where a republican would have been elected, and one vacancy in Washington, where a federalist would have been elected, would have been agreed upon. By this acceptance of the report neither party would obtain an advantage over the other. Mr. M. in offering the resolve, "expressed an ardent desire which he believed he felt in common with all his friends with whom he acted, to have the government organized and to proceed without delay to despatch the public business. He said he had offered the resolve in the spirit of compromise, and hoped gentlemen would meet him on fair and liberal ground. The report was based on the principles of reciprocity and liberality, and if gentlemen on the other side were sincere in their professions of a desire to proceed in the public business, he hoped they would support the resolve as the only means he could think of to accomplish that end.*"

But this resolve was also rejected, the eight federal members voting against it! Mr. Megquier then moved to recommit all that part of the report, which had not been accepted. This was also negatived by the votes of the eight federal Senators! How then it was possible to organize the Senate, upon any equitable principles of either persuasion, or compromise, was not an easy question to answer. It appeared obvious now, that the federal party in the Senate had resolved to accept of nothing short of an absolute ascendancy in the Senate, if the vacancies were never filled. To this, however, their opponents appeared equally determined never to submit.

It was on the forenoon of the last named day, that the order [Mr. Boutelle's] from the House, proposing a convention to fill vacancies in the Senate, was communicated to the Senate. Mr. Megquier requested to have the order read from the chair, that the Senate might understand its purport and proposition. Messrs. Phelps and

* See report of proceeding in the Eastern Argus of February 2. The resolve was advocated by the mover, Messrs. Dunlap, Ingalls, and Hutchinson, and opposed by Messrs. Kingsbery, Phelps, and Hilton.

Kingsbery thereupon objected to the reading of it! A singular position indeed! Messrs. Megquier, Dunlap, Hutchinson, and Ingalls, severally contended earnestly for the right to have it read, while the other gentlemen just named as strenuously objected to the reading of it. What their motive was in taking this singular stand, cannot be divined by those not in the secrets of that party from which the order emanated, unless it was, that they designed to prevent the Senate from acting upon it at all in their legislative capacity, although it was addressed "*to the Senate.*"* in order to leave each Senator to act for himself. From the course subsequently pursued by the federal Senators, the correctness of this last supposition is rendered very probable. At length Mr. Megquier put his motion to have the order read, in regular form. However, the Senate adjourned before a decision was obtained upon it.

On the next day, Mr. Dunlap moved an order† to obtain the opinion of the Justices of the Supreme Court, on the constitutionality of Senators forming a convention with members of the House, to fill vacancies in the Senate before the Senate had declared such vacancies to exist. This motion was designed as preparatory to a motion to defer holding the convention proposed by the House, until it had been ascertained that such a convention would be constitutional. But the federal Senators were determined to suffer no interruption in their preconcerted plan, of filling the supposed vacancies in the Senate with their own partizans. Mr. Kingsbery accordingly moved to lay Mr. D's. motion on the table. This was negatived, 8 to 8. Mr. Gardner moved to postpone it, until the next day at 3 o'clock. But as the time proposed for the convention was the afternoon of the then present day, it was contended by the republican members that such a postponement would be improper. That the convention ought to be postponed, and not the order to ascertain whether such a convention could be properly holden. Mr. G's. motion was therefore negatived, 8 to 8.

Mr. Kingsbery then moved to adjourn the Senate; but this was negatived, 8 to 8. Mr. K. then rose and denied the right of Mr. Hall, the President, to vote at the board, on the ground, that Mr. Cutler, the acting Governor and

* See the order on page 72 † See appendix B.

President of the Senate of the preceding year, was no longer of right the acting governor, but that Mr. Hall was. That, therefore, the vote to adjourn, excluding Mr. H's. vote, had been carried, and he considered the Senate as adjourned. Whereupon Mr. Phelps rose and asked leave, which was granted, to read and lay upon the table a protest, signed by the eight federal Senators, against Mr. Hall's right to act as President of the Senate. These eight, upon a signal given by Mr. Kingsbery, immediately after withdrew from the Senate chamber.

Only eight members were therefore left to transact business. But these did not constitute a constitutional quorum. Nevertheless, as a matter of duty and all that could be done under such circumstances, they passed the following order, to wit :—

"*Ordered*, That a message be sent to the House of Representatives, that the Senate *non-concur* with the House of Representatives in their proposition to meet in convention this day at 11 o'clock, A. M. for the purpose of filling deficiencies in the Senate, for the following reasons :

1st. Because the Senate have not determined what deficiencies exist in the Senate.

2d. Because the Senate have not ascertained who are the constitutional candidates to fill such deficiencies, if any exist.

But the Senate will communicate with the House of Representatives as soon as deficiencies are determined, and the constitutional candidates ascertained, proposing a convention of the members of the two Houses, for the purpose of filling such deficiencies."

A message was accordingly sent to the House.

The remaining Senators also sent the following message to the then acting Governor and Council :—

"Whereas a part of the members of the Senate have withdrawn from the Senate board, without the consent of the Senate, for the avowed purpose of meeting the members of the House of Representatives in convention to fill deficiences in the Senate, which have not been ascertained by the Senate, and when the constitutional candidates have not been designated by the Senate for filling deficiences, if any exist, and without the concurrence of the Senate to such convention—and whereas such a procedure is unwarranted by the constitution, and any election made by such convention is void and can give no right to any individual, so elected, to a seat in the Senate, or to take part in the acts of the Senate ; it being the exclusive right of the Senate alone to judge of the elections and qualifications of its own members, and the Senate being, therefore, the only constitutional tribunal to decide upon the legality, or illegality, of the returns of votes for Senators—Therefore,

Ordered, That a message be sent to the acting Governor and Council, that they may have notice that the Senate have not con-

curred in the election of any persons to fill any deficiency which may exist in the Senate."

The Senate then adjourned. We shall not here stop to comment upon the singular condition into which the government of the State was thrown by these proceedings. The reader will form his own opinion of the expediency of precipitating the two branches of the legislature into a course so novel, unprecedented, and completely without a parallel, when, by waiting a short time for the opinions of the Justices of the Supreme Court, every thing might have been made to go on harmoniously, if not exactly to the wishes of both parties. If it was wisdom to hurry the convention on in the way it was hurried, then, of course, it was impolitic and improper for the republican Senators to impede it. The decision of the Judges subsequently obtained, determines, however, pretty clearly, which party acted the wise and commendable part, and which pursued a course of violence, and departed from both precedents and the constitution. Our business is mainly to record facts as they transpired, and to turn both parties over to the approbation, or condemnation, as the case may be, of an impartial and discriminating people. One thing is certain, the course of one or the other party deserves to be severely reprobated and condemned by the people. A partial or faint expression of disapprobation upon such strong grounds as were taken by the federal party, if those grounds were unconstitutional, would not have that corrective tendency, which a violated constitution deserves at the hands of those for whose good it has been instituted. And so on the other hand—if the firm resistance of the course pursued by the federal party, on the part of republicans, was not justifiable, then it becomes the people to say so, through their future elections, in a voice that cannot be misunderstood. But it should not be denied, that the laboring oar is on the side of the federal party, as they have neither precedent under the constitution, nor precept in it, upon which to justify scarcely any of their proceedings.

CHAPTER XI.

Unconstitutional Convention.

We have now traced the proceedings of the two branches of the Legislature to an epoch that will bear to be denominated equally humiliating to the party, by whose measures of violence it was effected, and disgraceful to the government of the State. We allude, of course, to the Convention that was formed by the federal party, to fill vacancies in the Senate, before any had been agreed upon, or declared to exist by that body, and before any persons had been designated constitutional candidates to fill any vacancy that might be in that branch! One, in the calm exercise of common sense, without either precedent or experience to guide him, could hardly be supposed to read the constitution of this State with any degree of attention, without being impressed with the great impropriety, irregularity, and unconstitutionality of such a proceeding. As the like had never been thought of before, and as all precedents and experience stood opposed to it, the inference will be irresistible, with the candid everywhere, that the necessities of the federal party must have been felt by them to be of a character bordering on desperation, and the struggle with them like the struggle of death, or its members would not have been wrought up to the boldness of resorting to such an anomalous and hopeless expedient, with the view of making it good and consistent with the principles and spirit of our written constitution. But it is the common character of obstinacy and premeditated guilt, to drive on to the commission of two, and even more, additional outrages, in the blind hope of escaping with impunity in the end, rather than to acknowledge and repair any portion of one, though already detected in it. Borne on by either the one or the other of these motives, and, perhaps, at times by both, the federal party appeared prepared to adopt any measure, or to pursue any course, which their strength of numbers could sustain, without reference to either authority, or consequences, provided it were only calculated to defeat the course of proceeding contended for by their opponents. They proceeded thus, from one innovation to another, until at last they found themselves

too far removed from the ordinary path of duty, either to retrace their steps, or halt, without confessing themselves entirely defeated and routed, and at the mercy of the people and their opponents. They saw, that even the poor consolation of attributing their misfortunes to their opposers was not left them, as these last had neither recommended, nor forced them into this strange dilemma. Their own precipitancy and imprudence alone could be made chargeable for it. And hence, from this period, the desperate motto of "neck or nothing" very evidently imprinted itself upon their feelings, and infused into them far more intrepidity, than discretion.

The Convention, to which we have alluded, was formed by a conjunction of the eight federal members, who seceded from the Senate Board as mentioned in our last chapter, with the federal members of the House. The eight came into the Hall of Representatives, and thereupon the Speaker, without an intimation of the object from any other source, betrayed the perfect concert which his party had entered into out of doors to control the proceedings of the State Legislature, in remarking that Senators had arrived for the purpose of forming *a convention* to fill vacancies in the Senate, and that he (the Speaker) should take the liberty of nominating Mr. Kingsbery, of the Senate, *as Chairman of the Convention!*

The hall and gallery of the House was at this time crowded at every corner with spectators. An intense anxiety was obviously felt by all. The pallid countenances of some, the fixed look and features of others, indicated but too truly, that doubt, and dread of consequences which might ensue, prevailed throughout the body. A recollection of the awful convulsions into which the measures of the self-created legislative assemblies of France had at different times plunged the populace of that kingdom, seemed to come simultaneously over every one present, for a moment, and feelings of amazement and terror were predominant in every bosom. A crisis was evidently at hand, in the estimation of all. Nothing of the kind under our consistution—under our government, under any government in the Union, had ever before been witnessed or heard of. The whole proceeding was like one started up in the hurry and desperation of a revolution, which had already prostrated the stoutest

barriers of the constitution, and was now marching in violence onward, in despite of the rights of the people—the vested and most sacred rights of their representatives in legislature assembled, and to the entire overthrow of all established order and precedents!

The message referred to on page 82 came from the Senate chamber, and interrupted the spell for a moment. After it had been read, Mr. Smith of Nobleboro', asked the Speaker what was the question before the House. The Speaker replied, that the question was on selecting a Chairman to preside in the convention. The House having passed an order yesterday to go into convention at this time with the Senators elected, to fill vacancies in the Senate, he considered that order as equivalent to a vote of the House to resolve itself now into such a convention.

Mr. Smith said "I most solemnly protest against the whole proceeding. I am opposed to choosing a chairman. I see some of the members, or those who have been declared members of the Senate, occupying the places of members of this House, for the purpose, we are told, of forming a convention. But, Sir, we are told by a message just now arrived from the Senate, that that branch of the Legislature have declined so forming a convention, until the vacancies at that board have been properly and constitutionally ascertained. And are we not bound to believe the message sent us from that branch? If the Senate decline, or do not concur in the proposition to form a convention, is it in the power of this House, with three or four members of the other branch, to go into a convention to fill vacancies in the Senate? Sir, I believe the proceeding to be *unconstitutional*, *unprecedented*, and an outrage upon the constitutional rights of the members of this body, and *an outrage upon the rights of the people*. We have arrived at a new era. I behold with alarm and dismay the steps that are now taken. It is a proceeding in violation of the constitution, and we are trampling the rights and privileges of the people under our feet. It is not, Sir, in my power to express the emotions I feel at this time. I want words, Sir, to express my emotions. I have had the honor to hold a seat in the legislature of this State, and in the Legislature of Massachusetts, but never, never, Sir, did I behold a spectacle so appalling to the stoutest heart, as

the one I now witness. We are taking into our hands all the rights of the people of York and Washington counties, in direct violation of the constitution. We are making that constitution, which we have solemnly sworn to support, a mere dead letter. I cannot therefore give my consent to the choice of a Chairman. We have a Speaker, elected by a majority of the House, and it is his duty to preside over the deliberations of this House. I am opposed to the choice of any other presiding officer, and shall not consider myself under his government. I am not a member of a convention. No vote has been passed to resolve this House into a convention. I protest in the most serious and solemn manner against a convention, without the concurrence of the Senate. Nor, Sir, will I give it sanction by my presence."

The speaker said, "as the proposition for Mr. Kingsbery to take the chair, is my own, and inasmuch as that gentleman seems not inclined to accept it, I shall take the responsibility, in the absence of the President of the Senate, to retain it."

Mr. Ruggles said, "he could not but concur with the gentleman from Nobleborough, in the remarks he had made upon this extraordinary and singular proceeding. But as this subject had been before fully discussed, he would not occupy time to reiterate arguments. But he held in his hand a PROTEST against the formation of the convention at this time, signed by SIXTY EIGHT MEMBERS OF THIS HOUSE, which he asked leave to read and have entered upon the records of the House." The protest was then read, and a vote passed to have it entered upon the records of the House.

Mr. Scamman, of Saco, then read a resolve recapitulating the proceedings of the Governor and Council upon the senatorial votes given in York District, the number of votes returned for each candidate, according to the report of the Senate thereon, and declaring three vacancies of Senators in that district.

Mr. Boutelle moved to amend the resolve by inserting the number of votes given each candidate according to the report of the Governor and Council.

Mr. Smith, of Nobleborough, said, without acknowledging that we are now in a convention, and protesting still against forming a convention, no vote having yet been taken to go into convention, he was opposed to the

resolve of the gentleman from Saco. The resolve cannot be a law without its passage by the two branches of the government. Such a proceeding, is illegal, unconstitutional, and he protested against it in the name of the people he represented, and in the name of the people of this State. He declared here in his seat, as a member of this House, that a resolve passed by a body of men thus formed, thus *purged*, will be nugatory and void. And entertaining this opinion, he must protest against it, and ask leave to retire from the House.

The sixty eight members, who signed the PROTEST, thereupon retired from the House, having done all in their power to protect the constitution, and choosing not to be spectators of its unavoidable disgrace. The remaining *seventy five* members of the House, together with the eight Senators, continued their proceedings, nevertheless. They elected John Bodwell, Abijah Usher, Jr. and Nathan D. Appleton, to fill three alleged senatorial vacancies in York county, and Obediah Hill to fill an alleged vacancy in Washington county. These elections were forthwith denounced as illegitimate by the republicans, and the convention denominated the "HARTFORD CONVENTION No. 2." Both were also subsequently decided to be unconstitutional, by the unanimous opinions of the Judges of the Supreme Court.* By these opinions too, the positions taken in the PROTEST of the republican members were fully and triumphantly substantiated, and almost the language of the protest, in some instances adopted. About the character of the convention, therefore, no diversity of opinion can hereafter exist among the people. Moreover, it bespeaks a condemnation of its projectors and supporters, which need not be magnified for effect, by their adversaries. On the contrary, the dictates of ordinary charity require, that, *as a fallen foe, it should be spared.* It may be remarked, however, that the folly and impropriety of this anomalous proceeding stand out more glaringly against the party that is chargeable with it, because of the wilfulness with which it was forced on in both branches of the Legislature, against the salutary and timely propositions of the party opposed to it, to delay it for a short time until the opinions of the Judges of the Supreme Court could be had, to

* See their opinions in the Appendix.

determine whether it was constitutional or not, and whether it would avail any thing, or not. Had this conciliatory and safer course been adopted, or had it not been proposed over and over again, and as often rejected, the praise now due to the one party, for their firm and manly resistance, would be less imposing, and the censure due the other party, for their recklessness and precipitate violation of the constitution, would be easier qualified and sooner forgiven. As it is, the confidence of the people in the latter must be for a long time limited, while it will be proportionably increased in regard to the wisdom, firmness, integrity, and patriotism, of the former. Without saying what the former deserve, it may be safely alleged that the latter deserve well of the people in this matter, and will reap, at last, the ineffable reward of having abided throughout by their oaths of office, and defended the constitution "*to the last ditch.*"

CHAPTER XII.

Constitutional Question.—Opinions of the Judges.—Acquiesence of the Republican Party.—The illegitimate Senators.—Confusion in the Senate.—Acceptance of the Report on Votes for Governor.—Adoption of the illegitimate Senators.

The decease of Governor Lincoln—whose name calls up to our recollection an era of wisdom and quietude in the administration of our State government, to which the people turn with pride and satisfaction from the present state of public affairs—gave rise to a new question, behind the decision of which by the Judges of the Supreme Court, the federal party have endeavored to hide all the deformities of their proceedings. The question was, whether, when a vacancy in the chair of state occurs, and is filled by the President of the Senate for the then political year, that President, or the President of the Senate for the new political year succeeding, is constitutionally Governor during so much of the new year, as precedes the election or inauguration of a new Governor?

The republican members of the Legislature, and we may say, the public generally, were inclined to the opinion, that the President of the Senate, upon whom the chair of state has devolved, is constitutionally Governor without regard to time, or the term of other offices, and "*until another Governor shall be duly qualified.*"* The federal party, however, expressed an occasional doubt of the correctness of this opinion, and of Mr. Hall's right to continue at the Senate Board—he being the President and Governor *ex officio*, as they contended. But to remove all objection on this score, the acting Governor, Mr. CUTLER, addressed the Judges of the Supreme Court upon the subject, (January 23,) and requested their opinions in regard to the meaning of the constitution in this particular. It was fair to presume, that honest opinions were entertained upon both sides, and it was wisdom, under such circumstances, to make this appeal to the umpire pointed out in the constitution for such occasions. It would have been greater wisdom too, for all parties to have waited until this appeal could bring a disinterested answer, from the highest judicial tribunal in the State. However, the impatience of the federal party to show off a disposition to do business, and an unwillingness to have the concert of their members weakened by delay, were alike opposed to this course. So the protest of the federal Senators against Mr. Hall's right to vote was made, as we have before stated, and to give a fairer coloring to the convention then about to be formed, without waiting for the decision by which, as it was well known, their opponents, the republican party, were willing and determined to be governed. The opinion of the Judges was subsequently communicated†—the opinion of the federal party upon the subject was sustained by two of the three Judges, and Mr. CUTLER thereupon *resigned* the office, and Mr. HALL retired from the Senate Chamber to assume the functions of acting Governor. This was as well in conformity with the wishes of the republican members of both branches of the Legislature, as with the pleasure of both the gentlemen named, both of whom, together with the whole body of their political friends, still believed in the correctness of their own former opinion of the requirements of the constitution,

* This is the language of the constitution. †See Appendix C.

and of that of the dissenting Judge—WESTON. Nevertheless, they conceived it proper to yield, the opinion of the Court having been asked and obtained, and being against them, and supported by about one half of both branches of the Legislature. They did so—and although we are of opinion that they yielded to what was erroneous in principle, the spirit of conciliation and of respect for the judiciary department of the government, which they manifested therein, deserves the highest commendation.

By the way, it is proper to observe, that the PROTEST of the federal Senators against the validity of Mr. Hall's votes in the Senate, was not sustained by the decision of the Court—the decision not being made on *that* point. It consequently was still an unsettled question, whether before Mr. Hall had assumed, and until he was qualified to act as Governor, his votes in the Senate were, or were not valid. The constitution suspends the rights of the President of the Senate, only while he "*shall exercise said office*" of Governor.

It is further to be remarked, that whether Mr Hall's votes in the Senate, before assuming the chair of State, were, or were not *valid*, the character of the Convention to fill vacancies in the Senate remains the same, as he neither voted in favor, nor against that Convention, the question of forming that convention *having never been before the Senate to be acted upon*. On the contrary, the eight federal Senators voted against even *reading* the proposition of the House to form it, as has already been mentioned.*

In the course of a few days after the convention mentioned, all four of the persons who had been elected by it appeared at the Senate Board, and claimed seats and the privilege of Senators. Motions were brought forward by the federal members to grant them both. But the first and the last were resisted manfully and steadfastly by the republican members. The President of the Senate utterly refused to recognise either of them as Senators. Much debate grew out of the subject, and the turbulence of one of them† more especially, on several occasions interrupted the proceedings of this branch of the Legislature to a degree which must have exposed him to the severest punishment, but for the mild and forbearing

*See pages 80 and 81 †N. D. Appleton.

disposition of the worthy President. The method of those interruptions were various—proceeding first in the shape of a motion from one of the federal members of the board, then from another of them, and now, when a question was to be taken, from the positive and arbitrary demands of the "illegitimates" themselves, to have their names called, and their votes recorded, like the regular members! It is impossible to give the reader, who was not an eye witness of it, any thing like a general notion of the confusion, disorder and personal bickerings, which were thus kept up in the Senate Chamber, for many days in succession. The dignity of that branch was entirely lost—decorum set at defiance,* and a species of threats and bullying in words took its place, just calculated to excite the curiosity of the vulgar and idle, and the apprehensions of the more considerate; many of whom flocked daily to the Senate Chamber, to see the fun and what danger might follow, as regularly as the members themselves. In fine, this regular crowd became after a while, so lost to all sense of respect for the Senate, from witnessing the impudence, and listening to the jargon, of Appleton and his abettors, that they hissed, and stamped the floor, at every proceeding, or cheered it by their laughter, according as it amused or displeased them, precisely after the manner of those in the pit of a common play house. These scenes were humbling to the pride of every well disposed and reflecting citizen, whether of the one, or of the other party. The character of the State, through the proceedings of violence which appeared to increase daily, was most sensibly outraged and disgraced and forms and precedents, which had ever before been found salutary and effectual, were now scoffed at and abandoned, under the paltry plea of *necessity*, and *an inclination to proceed to business!*

It was fondly anticipated by many, that an end would come to these proceedings, when the opinion of the Judges of the Supreme Court should be obtained on the interrogatories propounded to them by the Senate, on the 2d of February. But it did not terminate until a few

*Among other base means put in requisition to browbeat and intimidate the President of the Senate, were *anonymous letters*, threatening him with impeachment, if he did not relax his firmness towards the federal party, and telling him that his grey hairs were soon to be brought to the grave!!!

days before the close of the session, and several days after the Judges had decided the point against the federal party a *second time* in answer to questions propounded by Mr. Huntoon, as Governor! In this matter, the contrast between the course pursued by the federal party, and that pursued by the republican party, when the decision of the Judges was against them, must strike the candid reader as reflecting great honor and praise on the latter, and equal censure on the former. Upon this subject there can be but little difference of opinion among the people.

Mr. Hall, President of the Senate, retired from the Senate Chamber to the Executive department on the 5th of February. This left the federal party in the Senate, a majority of one. Mr. KAVANAGH, Secretary of Senate, took the chair, and the Senate proceeded to the choice of President *pro tem.* The committee to count the votes reported that eighteen votes had been given, three of which were the votes of three gentlemen from York District, whose rights to vote at the Board had not been recognised. The question on counting these votes was then put and decided in the affirmative as follows:—

YEAS.—Drummond, Gardner, Healy, Hilton, Hinds, Kingsbery, Phelps, Morse.—8.

NAYS—Davee, Dunlap, Hutchinson, Hutchins, Ingalls, Megquier, Steele.—7.

Mr. Kingsbery was then declared elected President *pro tem.* having ten votes.

Mr. Phelps then moved the following order:—

"ORDERED, That Messrs. Usher, Bodwell, and Appleton, Senators from York, be permitted to retain the seats they have severally taken."

The question was taken by yeas and nays, and decided in the affirmative—each member voting as upon the last question.

Having thus worked themselves into a majority in the Senate, the federal party felt prepared now to drive on their great purpose of seating Mr. Huntoon in the Executive chair! An order was forthwith brought forward to recede from the former vote of the Senate, whereby the report of the committee on the votes for Governor had been rejected, and to accept it as amended. Again, the injustice, inconsistency, and glaring violence of the report, were pointed out by the republican members. But

argument was idle, as if spent upon the dead. The purpose of their opponents was fixed—an opportunity now offered for effecting it. They voted the acceptance, as follows:—

YEAS.—Drummond, Gardner, Healy, Hilton, Hinds, Kingsbery, Morse, Phelps, *Appleton, Bodwell, Usher.*—11.

NAYS.—Davee, Dunlap, Hutchinson, Hutchins, Ingalls, Megquier, Steele.—7.

Mr. Huntoon was thereby declared duly elected, and a committee raised to inform him of it. Mr. *Dunlap* was appointed one of this committee. But he rose in his seat, declared that he did not and could not believe Mr. Huntoon to be constitutionally elected, and therefore declined serving on the committee. Mr. *Ingalls* was then appointed in his stead. But he, too, declared his convictions to be in accordance with those of his colleague, and also declined the service.

It appeared, however, that the federal party, although they had in the absence of President Hall, carried all before them—voted the York Senators into the Senate, and made a Governor of Mr. Huntoon—did not rest exactly easy under their transactions. There was evidently an anxiety to fill up the breaches they had made in the constitution, if possible. Accordingly, on the Monday following, (February 8,) Mr. Phelps moved an order in the Senate, recapitulating in a preamble, the election of Bodwell, Usher, Appleton, and Hill, and proceeding then as follows:—

"ORDERED, That said four Senators were duly and constitutionally elected to fill vacancies existing, and that the three first named, having been qualified, are entitled to seats at this board, and to all the rights and privileges of Senators elected by the people."

Motions were made by republican members, first to lay this order on the table, then to commit it, then to postpone it indefinitely, on the ground that if the elections of the persons named, were constitutional, they needed "no healing act"—if they were not constitutional, no vote of the Senate could make them so."† But these several motions, together with others to amend the order, were negatived,—the *seven* republican members voting in favor of each, and the *eight* federalists voting against each. The order was finally passed, yeas 8, federalists—nays 7,

* These points were fully sustained by the opinions of the Judges. See Appendix.

republicans. A PROTEST was then offered, and put upon the records, signed by the seven republican members, denying the constitutionality of the convention by which the "four Senators" were elected, and protesting against their alleged right to act at the board.

CHAPTER XIII.

Proper method of forming a Convention—Inauguration of Mr Huntoon—His Message—Mr Hall's return to the Senate Board—Desertion of Members from the Senate.

On the 8th of February, Mr. Swan* introduced a motion into the House, to send a message to the Senate proposing a convention of the two branches, to elect a Secretary, Treasurer, and Councillors—which passed. In the Senate, Mr. Drummond moved, on the same day, that *the* Senate concur in the proposition of the House, which was agreed to. This fact is important to elucidate the course which the federal party now felt to be proper, in order to form a constitutional convention of the two Houses. They herein acknowledged, that a concurrent vote of the two branches was necessary. And yet they persisted—Mr. Drummond (see his votes) with the rest, that the persons elected to the Senate, by a convention not formed by such a concurrent vote of the two branches, were, nevertheless, constitutionally elected!

The convention of the two Houses was formed on the next day—and again the right of the three York "Senators" to vote in the choice of the officers to be elected, was denied, contested, but sustained by a vote of the federal party, 87 to 76. Another PROTEST against this proceeding, signed by the republican members of both branches, was then read and entered on the record. The business of the convention was next completed, and the convention dissolved. On the Wednesday following, Mr. Huntoon was inaugurated, and shortly after communicated his message to the two branches. We regret that our

* A federalist always.

limits do not permit us to take a more particular notice of this document. Rumor, in advance, declared that it was in preparation by some of his friends. But after its appearance, the people generally ascribed it to him as his own production. It could not be otherwise. The many gross errors of language, mysticisms, grammatical defects, and ill selection of topics, were all in character with the want of experience, lack of talent, and weakness of intellect, which had been ascribed to him by his opponents, and not very positively denied by his supporters. None pretended that it was calculated to elevate the character of the State, while many believed it calculated to degrade our government from the high rank and station to which it had risen, through the chaste and classic productions of the lamented Governor LINCOLN. We leave the reader to draw his own conclusions from the facts before him.

After the inauguration of Mr. Huntoon, his message, the recognition of the illegitimate Senators and the other proceedings* had since Mr. Hall's absence from the Senate, the federal party felt quite secure of their power. They allowed Mr. Healey, one of their members in the Senate, leave of absence. So that on Wednesday, when Mr. Hall returned to the Senate board, he found only seven of the original members of the federal party present, with the three illegitimates, and eight of the republican party, including himself.

Mr. Kingsbery, on the morning of the next day, foreseeing the impropriety of urging further the claims of the illegitimate Senators, notwithstanding the votes passed in regard to them, proposed through Mr. Megquier to select a committee of one from each party to draw up a statement of facts upon all past proceedings, to be presented to the Judges of the Supreme Court for their opinions upon the same, and with the agreement of both parties to be bound by their opinions. This was, to be sure, rather late in the session, to undertake repairs in the proceedings. Nevertheless, it was agreed on, and the Senate was forthwith adjourned, by mutual consent,

* To give time to execute all things to the liking of the federal party, Mr. Huntoon was kept within his boarding house, near the Senate chamber, several days—from Friday until Wednesday, after his election was declared by both branches, without being allowed to signify his acceptance of the office! He was declared elected on Friday, and not inaugurated until Wednesday following, notwithstanding the professed hurry of his party to transact business!

until five o'clock, P. M. to facilitate this purpose. Here, then, was manifested a spirit of amicable compromise. The hope was now entertained that an end was about to be put to all difficulties. But what was the surprise, when Mr Kingsbery, in a few minutes after the adjournment of the Senate, declared to the republican members that he was not authorised to make the proposition which had been accepted, and that his political friends would not concur in it! The Senate was adjourned—the whole day must be wasted, and the promised adjustment recalled!

It has since been rumored, that this proposition was but a finesse to gain time for the recall of Mr. Healy, who had leave of absence. By his absence, the true state of parties was reduced, without counting the illegitimate members, to eight republicans, and seven federalists. But of the truth of this intimation, we are not authorised to speak. To say the least, however, the movement, considering its result, was exposed to such suspicions. But the dishonor of making and then retracting the proposition in the manner it was done, need not be aggravated by suspicions. The contrast between the disposition manifested by republicans, and that which actuated the federal party in this, redounds as much to the praise of the former, as to the disgrace of the latter, in the estimation of the disinterested and candid.

When the Senate came together in the afternoon, it was believed to be high time that the dignity of the Senate, and the rights of members constitutionally elected, should be restored, by freeing the board of the members whom the House, without the concurrence or co-operation of the Senate in any shape, had forced into it, to control by their votes all its proceedings. Mr. Dunlap accordingly introduced the following preamble and order:—

"Whereas on the fifth day of February instant, the Hon. Joshua Hall, President of the Senate, then exercising the office of Governor of this State, did propound to the Justices of the Supreme Judicial Court, under the provisions of the constitution, the following questions, to wit:

1st. Can a convention of the members of the Senate and House of Representatives be constitutionally formed, for supplying deficiencies in the Senate, without the concurrence of the two branches of the Legislature?

2d. Can such a convention, formed without the concurrence of the Senate, and which does not contain a majority of such Senators

as are elected, proceed to supply deficiencies, before the Senate has ascertained the deficiencies that exist in the Senate, and designated the constitutional candidates to supply said deficiencies?

And can any other body, under the constitution, than the Senate, designate the constitutional candidates to supply such deficiencies?

And whereas two of the said Justices, to wit, PRENTISS MELLEN, and ALBION K. PARRIS,* being a majority of the Justices of said Court, have delivered their written opinions to the said Joshua Hall, that a convention cannot be constitutionally framed, for supplying deficiencies in the Senate, without the concurrence of the two branches of the legislature, and that such convention, formed without the concurrence of the Senate, and which does not contain a majority of such Senators as are elected, cannot proceed to supply deficiencies before the Senate has ascertained the deficiencies that exist in the Senate, and designated the constitutional candidates to supply such deficiencies, and that no other body under the constitution other than the Senate, can designate the constitutional candidates to supply such deficiencies, when a quorum of the Senate has been elected, and a Senate has been duly organized: And whereas the Senate, which was duly organized by the election of a quorum of the number of Senators required by the constitution, and by the choice of a President on the 13th, and of a Secretary on the 14th day of January, 1830, has never determined the deficiencies which exist in that branch of the legislature, and has never, by any vote, determined and decided who are the constitutional candidates from whom any deficiencies in the Senate which may exist, ought to be supplied, and has never by any vote of the Senate so organized, concurred with the House of Representatives in the formation of any convention of the members of the two Houses of the legislature for the purpose of supplying deficiencies in the Senate, and no convention was ever formed for the purpose aforesaid by the concurrence of the two Houses of the Legislature.

And whereas certain persons, to wit, Nathan D. Appleton, John Bodwell, Abijah Usher, Jr., and Obediah Hill, have appeared in the Senate and have claimed a right to sit and act as members of the Senate by virtue of an election by a convention holden on the 2d day of February inst. composed of the members of the House of Representatives and eight of the members of the Senate elected by the people, being less than a majority of such Senators as are elected, and formed, without the consent or concurrence of the Senate duly organized as aforesaid—Therefore

Resolved, That the said Nathan D. Appleton, John Bodwell, Abijah Usher, and Obediah Hill, have not been constitutionally elected Senators and are not entitled to seats at the Senate board."

Various motions were made by the federal members to evade and defeat this order, all of which were negatived by the republican members—Mr. Healy being still absent. The order was finally passed as follows :—

YEAS.—Davee, Dunlap, Hall, Hutchinson, Hutchins, Ingalls, Megquier, and Steele.—8.

* See Appendix B.

NAYS.—Drummond, Gardiner, Hilton, Hinds, Morse, and Phelps —6.

Mr. Megquier then moved the following order :—

"ORDERED, That the report of the committee appointed to examine the returns of votes for Senators, be committed to a select committee, to consider and report upon so much of the subject thereof as relates to the election of Senators by the people in the Senatorial Districts of York and Washington."

Various motions were also made to evade this order. But it passed and the Senate then adjourned.

On the next day, Messrs. Gardner, Drummond, Phelps, Hinds, and Morse, absented themselves from the board, without leave, whereby the Senate was disqualified from proceeding to any business, from want of a quorum.—Much had been said during the session, by the federal members who took part in the debates, about stopping the wheels of government. The wheels of government—of the Senate at least, were now effectually stopped by this movement—a movement which, like most others that had characterized the session, was without precedent, and without the pretence of justification, so far as we have seen. The Senate was adjourned until the afternoon, and the messenger sent in the mean time to find the absentees. The same persons were still absent in the afternoon, and the messenger reported, that he had called twice at the boarding houses of the absent members, but was unable to find either of them. Whereupon Mr. Davee submitted the following order :—

"Whereas certain members of this board have absented themselves from the Senate without leave first had and obtained, and whereas a quorum of the Senate is not now present, and the public business of the State is thereby much retarded, and the wheels of government stopped—Therefore

ORDERED, That the messenger of the Senate be directed to request the immediate attendance at this board, of Messrs. Phelps, Drummond, Gardiner, Morse, and Hinds, to aid in the discharge of public business—and that a copy of this order, signed by the President, and attested by the Secretary, be delivered in hand to each of said gentlemen, or left at their respective boarding houses, by the messenger of the Senate."

The order passed and copies were forwarded as directed.

The session was continued until nearly dark. Orders and petitions in the mean time came from the House, for the joint co-operation of the Senate—but the Senate could not move in them,—wanting a quorum.

On the next day, the same persons continued absent—

Mr. Kingsbery informed a committee of the Senate, that he was detained from the board by indisposition. The Senate adjourned until the afternoon, having instructed the messenger in the mean time to find and request the immediate attendance of the absent members. In the afternoon, the messenger reported that he was still unable to find either Messrs. Gardner, Drummond, Hinds, or Phelps! A preamble, reciting the facts, and the situation in which the Senate was placed, from the absence of members, together with an order, proposing to the House an adjournment of the legislature without day, at as early a period as possible, was then passed. This was to save the expenses of a useless and ineffectual session of the legislature, which was then going on at the rate of four or five hundred dollars expense per day, to the State. No one appeared to know where the four members, who had thus unceremoniously and without cause, deserted the Senate, had gone, or when they would return, if at all. The dilemma presented was a disgraceful one to the State. The existing vacancies in the Senate had not been filled, and could not be filled, unless on terms and with men that would suit the federal party alone—the federal members would not consent to refer the points in dispute to the Judges of the Supreme Court for counsel—nor could a majority of the federal members, who had been constitutionally elected, be found to attend to business, to furnish a quorum! Under such circumstances, an adjournment without day was proposed as unavoidable.

But on the Monday following, alarmed, perhaps, at the high responsibility which they had taken upon themselves in thus stopping the proceedings of the Legislature, or at the rudeness with which they had treated the solemn oaths of office which they had taken, to discharge *faithfully* the duties of their stations, Messrs. Drummond, Gardner, Hinds, and Phelps returned to the Senate Board.* Business was then resumed with great dispatch. Occasional interruptions were made, however, by renewals of the pretensions of the illegitimate Senators, although more questions upon the same disputed constitutional points had been drawn up, *ex parte*, with a statement of facts, and submitted to the Judges of the Supreme Court

* Mr. Healy, also, had been sent for, and brought back, and restored the federal party in the Senate to their former number 8, which was, probably, what effected the return of the *absentees*, though the messenger could not.

by Mr. Hunteon, all of which were again decided against the constitutionality of the Convention of the 3d of February, and against the course pursued by the federal party." This longer resistance of constitutional law on the part of the four illegitimates, and their abettors, began now very shortly to excite the indignation of the public mind. Nothing appeared to justify it. Decision after decision, or opinion after opinion, had been given by the Judges, directly against them. And to persist still in their course, indicated, not a lack of information respecting the meaning and requirements of the constitution, but a wilful devotion to party purposes, and sullen defiance of the counter judgments of the great mass of the people, who could not now but understand the course pursued, and condemn it as not only being unprecedented, but lawless in the extreme. It was not until a few days before the session terminated, that the illegitimate Senators† withdrew themselves and ceased to annoy the business of the Legislature. In regard to their pay for attendance, a short contest between the parties was had at the close of the session. The federal party contended for paying them their travel and attendance down to the time when the last opinion of the Judges was received; whereas the republican party contended that they should be paid only to the period when the first opinion of the Judges was received, declaring the convention that elected them to be unconstitutional. At length, the federal party in the House increased their first proposition, and voted to pay the four down to the last day of the session, although neither of them had pretended to attend as Senators, for many days! The Senate, of course, could never assent to such an extravagant and profligate disposition of the public funds, and so no pay roll was made up for the illegitimate four. Our limits will not allow us to elucidate by comments the character of this, and various other proceedings, incidental to the wild career ran by the federal party. But the reader can reason from what he knows, to suit himself.

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* See the questions and decision thereon in Appendix D.

† It is due to Mr. Hill to say that he was the least obtrusive of the four, and I believe, the shortest time at the Board.

CHAPTER XIV.

Expenses of the State.—Appropriation of $25,000.—Closing Scenes of the Session.—Concluding Remarks.

The extraordinary proceedings, we have noticed, and delay of business attendant thereon, could not but be productive of extraordinary expenses to the government—all of which must in the end come from the people. It cannot be doubted that these would to a very considerable extent have been avoided, had matters been allowed to take the usual course, and had not means and measures never before heard of, and which were entirely without a similitude, been forced into discussion, to take the place of ordinary proceedings, that would have met no hindrance and caused no delay. We have barely room to add on this point, a short comparison of the expenses of the different departments of government during the last, and the preceding session of the legislature. The pay roll of the House in 1829 was $19,920 50, and that of the Senate, including the pay of a *full* board, was $3,046 50—and that of the Council, was $937. The expenses of the House for 1830 were $24,249 50—those of the Senate, including only sixteen members, were $3,331, and those of the Council $1,613:—making an excess on the part of the House, over the expenses of the year 1829, of near twenty five per cent. or one quarter part—and on the part of the Council an excess of near *fifty per cent!*

Notwithstanding this additional burthen of expenses to the people, for which one or the other party is highly censurable, and notwithstanding the appropriations in land already made for erecting the public buildings at Augusta, the federal party in the House originated and carried through, a further appropriation in money, or authorised a loan therefor, of $25,000, to be expended without delay by the commissioner on the public buildings! Under the pressure of the times, and existing provisions, this new tax in money has been regarded by some, as imprudent and uncalled for. It was the understanding of the people generally, that the work should be carried on, not through forced loans of money, but

through the proceeds of the sales of public lands, which had been appropriated for the purpose. Why then a new appropriation, not anticipated by the past policy of the State, and not consistent with the general understanding in regard to the means that should be employed by the government in the work, so as not to run the people in debt, should be made, was a question to which subsequent events alone have been able to furnish a satisfactory solution. This solution, however, is open to objections from the one side, as of course it would be, however justly urged by the other. We shall give it, and leave it to the judgment of the reader to decide upon its rationality. It consists in the subsequent *removal* from office, by Mr. Huntoon, of the late commissioner on the public buildings, who was known to be opposed to the proceedings of the majority in the legislature, and the appointment thereto of one of that same majority, Mr William Clark, to whose exertions during the session the federal party were very considerably indebted. It was foreseen, that the appointment of Mr. C. would not be of much profit to himself or party, if he was obliged to wait in his movements the slower process of procuring funds from the sales of public lands. The term of his continuance in office was also regarded as precarious, considering the manner and circumstances under which he arrived to it. Hence, to effect a sure reward for his partizanship, and to possess him of the means of extending off hand his own influence and that of his party, recourse was had to a loan, so much at the expense of the people, and so contrary to all pre-existing calculations in regard to the public lands for that purpose.—The proceeds of the public lands, to be sure, when sold, may be appropriated to the payment of this loan. But the interest on the $25,000 is in the mean time lost to the people, as the legislature could be accommodated with buildings, free from expense to the State, until the sales of the public lands would complete the new edifice at Augusta. In fine, whether the motive that suggested the loan at this juncture, be what has been represented or not, it must be regarded, nevertheless, as impolitic and inexpedient, and a burthen upon the people without the call of necessity, for which the party originating it must stand accountable.

The closing scenes of the session were, in both branches, in perfect keeping with those that had preceded. They were also humiliating as any, to the pride of the citizen, and unbecoming the character of legislative assemblies. An order of thanks to the President of the Senate for his services, was introduced into that body, as had been customary. No one anticipated any opposition to it. The most that could be anticipated in regard to it was, that the federal members might not vote for it, though not against it. But to the great surprise of all present, Mr. Hinds, of Kennebec, who had himself voted to elect Mr. Hall President moved to postpone the order to the next legislature! This motion was seconded by Mr Hilton, and the question was pushed so far as to be taken by yeas and nays, and Messrs. *Drummond, Hinds, Hilton Morse, and Phelps* voted against it!* All of these individuals, it may be remarked, voted for Mr. Hall as President, against the knowledge and wishes of Mr. H's. party and friends And now they endeavored to disgrace him—inflict wounds upon his feelings, not calculated to promote either public or private good! It was regarded as a party measure of the most despicable cast. Consequently, when a similar motion was introduced into the House, to compliment the Speaker, the republican party, in justice to themselves, could do no less than to withhold their support from it. They, however, were too high-minded and honorable, and had too much regard for decency, to vote *against it!* They let it pass without soiling the records of their body, by yeas and nays upon the subject.

Thus the session was ended on the seventy third day, amid all the angry feelings between the two parties, that had attended almost every hour of its duration. It was ended, as the reader has perceived, without having ever properly organized the Senate, as the constitution requires, and, consequently, (as many believe,) without

* We know of but one parallel to this fact, and the author of it was a federalist. We now allude to the vote of Daniel Webster in Congress, during the war, against Mr. Clay. When Mr. Clay was appointed minister to Ghent to effect a treaty of Peace with Great Britain, he was Speaker of the House of Representatives. At the time he was about to leave the Speaker's chair, to enter upon his new commission, an order of thanks was proposed to be voted to him by the House,—expressing their wishes for his success and safe return to the country. *Mr. Daniel Webster voted against the pro osition!* Perhaps it is in the nature of the federal party to perpetuate such feelings towards their opponents.

performing a single act, beyond the choice of presiding and recording officers, which will stand the test of judicial investigation. Of a certainty, the constitution was not complied with in filling the vacancies that existed in the Senate, and of a certainty, therefore, the Senate was not composed of the *number required by the constitution.** How, with such an imperfectly constituted branch, a constitutional or perfect law could be enacted, is a question which may, hereafter, be productive of much vexation and expensive litigation among the people. Of a certainty, too, if there did not, and does not to this day, exist a constitutional Senate, the State is without a constitutional Governor, to say nothing of the other reasons which impeach Mr. Huntoon's right to act as such. These considerations however, are what will engage the cool reflections of the reader. He will, too, trace home to those who merit it, the censure which should fall upon them. It cannot be doubted, that constitutional elections to supply the vacancies in the Senate, would have been made at some stage of the session, had not others been made and insisted on without cessation, in violation of the constitution. Nor can it be doubted that other proceedings, in conformity to usage and the constitution, would have been adopted, had those which were brought forth without precedent been abandoned, and angry disputation concerning them been thereby ended. To effect all this was obviously within the power of the federal party, at all times. They originated these new proceedings—they insisted on their adoption—they might, if disposed, have abandoned them at any moment. Not a new proceeding was instituted by the republican party—not a single departure from usage was either suggested or advocated by them. When the decision of the Judges was against them, they submitted, without waiting to be urged to it by their opponents.† When the decision of the Judges was against the federal party, on questions submitted by the eight Senators, and on questions‡ submitted by Mr. Hall as acting Governor, the federal party refused to submit, though urged to do so by republicans. When the

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*The words of the constitution are—Art. I. part 2. sec. 1. "The Senate shall consist of *not less* than TWENTY." All laws, &c. were passed by a body composed of only SIXTEEN persons, as will appear, if ever the records of the Senate are produced to impeach any act of the legislature of 1830.

†See page 90. ‡See page 91, and Appendix B.

Court decided upon the questions put by the federal party themselves, still they refused to submit to the decision. When again, a proposition was made by one of the federal party to the republican party, to draw up a mutual statement of facts and questions thereon, to be submitted for the decision of the Judges, and for the guidance of both parties, the republican party assented to it off hand. But when they assented, the federal party retracted their offer,* under the pretence that it had not been authorized, although it was made by their principal man, Mr. Kingsbury. So, before any extraordinary measures had been adopted, and as soon as they were proposed by the federal party in the House, the offer was made by republicans, in order to save time, dispute, and to remove all doubt, to submit the constitutional questions and principles, which those measures involved, for the decision or advisement of the Justices of the Supreme Court. But to this, the federal party would not accede.† When these measures reached the Senate, the republican party again made the offer to consult the Supreme Judicial tribunal; but again the federal party refused‡ the proffer, and forced their way through, against every obstacle started in defence of the constitution and the usages that had obtained under it. When the question of counting votes for Governor came up, the republican party in each branch proposed counting all votes returned, without reference to little informalities, technical or clerical errors, and to follow strictly, what appeared to be the voice of the people, let disappointment fall to either party it might;—Or, on the other hand, to reject all returns that were thus informal or defective, and to count only such as came within the rigid requirements of the constitution.‖ But both of these propositions were disregarded by the federal party, and all defective returns that gave a majority *for* Mr. Huntoon were *counted*, notwithstanding their defects, and all that gave a majority *against* him, with one unimportant exception, were *rejected!* So, on questions of election of members in the House, when the lack of *prima facie* evidence was discovered in the certificate of a republican member, it was decided by the federal party to be fatal, until it should be made whole, before the committee on contested elec-

* See pages 96, 97. † See pages 75 and 76. ‡ See page 31 and Appendix B.
‖ See Chapters VII and VIII.

tions.* But when a like defect was discovered in the certificate of a federal member, it was not allowed to prejudice the certificate, on the presumption that it *would* be made whole, before the committee on contested elections.† Although nothing was carried in either branch to further the purposes of the republican party,—yet they did not, as in the Senate it was at all times in their power, absent themselves from their stations, so as to leave either branch without a quorum;—But, on the other side, the moment the federal party were unable to execute their purposes in the Senate, in consequence of the absence of one of their party, they absented themselves in a body from their seats, in defiance of all rule and all obligations, and refused to return or make a quorum until they had numbers sufficient to prevent their party plans from being defeated.‡ When Mr. Hall suffered himself to be elected by federalists to the office of President, contrary to the wishes of the republican party, the latter did not therefore abuse him. But when the federal party discovered that Mr. Hall would not sustain *them*, did they not begin to treat him with disrespect without delay? In all these particulars, and many more, to which we have alluded in the preceding pages, as well as in others which have from necessity been omitted, striking contrasts in the courses, inclinations, and principles of the two parties are presented to the understanding of the unbiassed and candid reader, and with him and an intelligent public, rests the judgment that should be pronounced upon them. But to say the least, they furnish some fearful innovations upon the established usages of legislative bodies, if they do not still greater violence to both the letter and the principles of our written constitution. And if these are sustained by the PEOPLE, every party, it is to be feared, that may hereafter obtain an accidental ascendancy in our legislature, will find in them an ample apology for resorting to whatever expedients their ambition, or desperation, may suggest, to retain their power over the will and destinies of the people.

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* See the decision on Roberts' certificate. † See pages 36 and 57. ‡ See page 99.

APPENDIX.

(A.)

IN SENATE, January 19, 1830

The Joint Committee, appointed to examine the returns of votes for Governor from the several towns and plantations in this State, have attended to that service and

REPORT:

That the whole number of votes, allowed by the Committee to have been duly returned, is *Forty-six Thousand five hundred and fifty one*; that the number necessary to constitute an election, is *Twenty-three Thousand two hundred and seventy-six*; that JONATHAN G. HUNTON has *Twenty-three Thousand three hundred and fifteen votes*, and is elected.

The Committee further report, that SAMUEL E. SMITH has *Twenty-two Thousand nine hundred and ninety-one votes*; that two hundred and forty-five votes were given for sundry other persons, and that seventeen scattering votes appear by the returns to have been given, but the returns do not designate the persons for whom they were given. The Committee did not allow and count said seventeen votes. The returns from Wales, Dresden, Bremen, Woolwich, Atkinson, Eddington, Howland, Levant, Lincoln, Appleton, Freedom, Oxford, and Blakesburg Plantation, were not certified to have been sealed up in open town meeting; but the votes from said towns and plantation were allowed and counted, viz: For Jonathan G. Hunton, four hundred and fifty-four; for Samuel E. Smith, six hundred and seventy-four, and twelve votes scattering. The returns from Vinalhaven, Alexander, Charlestown, Solon, Cherryfield, and Plantation No. 14, or Mariaville South, bear date, on the inside, as of September A. D. 1809, and on the outside, as of September A. D. 1829, and the votes from said towns and plantation were allowed and counted, viz. for Jonathan G. Hunton, two hundred and fifty-three; for Samuel E. Smith, two hundred and six, and seven votes scattering. The return from Bluehill was certified, on the outside by the Selectmen, but not attested, on the outside by the town clerk; but the votes from that town were allowed and counted, viz: for Jonathan G. Hunton, eighty-six, and for Samuel E. Smith, thirty-three. The votes from Plantation No. 23, in Washington county, were rejected; the return purporting to be a return from the town of No. 23, and being signed as by the Selectmen of No. 23 and town clerk. It appears by said return, that one

vote was given for Jonathan G. Hunton, and sixteen votes for Samuel E. Smith. The votes from the town of Baileyville were rejected; the return from said town being certified on the inside, by Daniel Ford, as town clerk, and certified on the outside, by Seth E. Hutchinson, as clerk of said town. It appeared by said return, that fourteen votes were given in said town for Samuel E. Smith. The votes from Herrioon were rejected, because the return was not attested, on the inside, by the town clerk. It appeared by said return, that three votes were given in said town for Jonathan G. Hunton, and forty seven for Samuel E. Smith. In the return of votes from Kittery, which was in the common printed form, in other respects, is the following statement, to wit, "after the above votes were sorted, counted and announced, and before the record was made, two more votes were given for the Hon. Samuel E. Smith;" but said two votes were not allowed and counted by the committee. In the return of votes from the town of Howland, it is stated, after giving the result of the balloting of the inhabitants of that town, that "the inhabitants of the district, called Passadumkeag, gave in their votes at the same time, as follows, for Samuel E. Smith, twenty-nine, Jonathan G. Hunton, eleven, Thomas Davee one;" these votes were allowed and counted; it does not appear by said return, that the inhabitants of said district, which is an unincorporated place, were assessed to the support of government by the assessors of said town. The votes from the town of Mercer, which were allowed and counted, were evidenced by a document, purporting to be a copy of the original return of the votes of said town, accompanied by the affidavits of the Selectmen and town clerk of Mercer, proving that the original return of the votes of that town, was properly made, in legal form, attested by the Selectmen and town clerk, and sealed up in open town meeting, and delivered to Jonas Parlin, Jr. to be forwarded to the Secretary of State's office; the affidavit of said Parlin, accompanying said document, proves that said original return, delivered to him, was taken from his office, or destroyed. The document aforesaid, and said evidence were received at the office of the Secretary of State, on the fifth day of December last. The return from Harpswell shews one vote, given in said town, written Jonathan Hunton, which was counted for Jonathan G. Hunton. By the return from Howard's Gore Plantation, it appears, that twelve votes, given in said Plantation, were written Samuel Smith, which votes were counted for Samuel E. Smith. By the return from Milburn, it appears, that four votes, given in said town, were written Samuel G. Smith, which were counted for Samuel E. Smith. By the return from Sullivan, it appears, that sixty-two votes, given in said town, were written Samuel C. Smith, which were counted for Samuel E. Smith. By the return from Sunkhaze Plantation, it appears, that four votes, given in said plantation, were written Samuel L. Smith, which were counted for Samuel E. Smith. The return from Monroe, on the outside, bears date the second Monday of September, A. D. 18— and, on the inside, A. D. 1829; the votes in said town, were for Samuel E. Smith, one hundred and eighteen, and for Jonathan G. Hunton, seventeen, and said votes were allowed and counted. By the returns from sundry towns, it appears that twelve hundred and eighty votes were written "Jonathan G. Huntoon," which were

allowed and counted for Jonathan G. Hunton. The Committee have formed a list entitled, "List of votes for Governor, 1830. Eleventh Session," to which are annexed two sheets, marked A. and B. bearing the names of the persons for whom the scattering votes were given, and to which reference is made.

(B.)

[The following is the order that was under discussion in the Senate on the 2d February, at the time the eight federal Senators seceded to form a convention with the federal members of the House.]

Mr. DUNLAP moved an order as follows:

IN SENATE, February 2, 1830.

Whereas the Senate has not as yet determined the deficiencies that exist at the Senate Board, nor the constitutional candidates to supply the same, if any exist: And whereas the Senate has not as yet concurred with the House of Representatives in their proposition for a convention for the purpose of supplying deficiencies at the Senate Board—It is therefore *Ordered*, That the Justices of the Supreme Judicial Court be requested to give their opinion, on the following questions, to wit.:

1st. Can a Convention of the members of the Senate and House of Representatives be constitutionally formed for supplying deficiencies in the Senate, without the concurrence of the two branches of the Legislature?

2d. Can such a Convention, formed without the concurrence of the Senate and which does not contain a majority of such Senators as are elected, proceed to supply deficiencies before the Senate has ascertained the deficiencies that exist at that Board, and designated the constitutional candidates to supply said deficiencies?

[While Mr. Hall was officiating as Governor, in order to obtain the information so desirable and important under the circumstances that existed, and to cure all objections to the foregoing questions from the Senate, propounded when only eight Senators were present, he submitted to the Judges the following interrogatories:—]

STATE OF MAINE.

To the Hon. Justices of the Supreme Judicial Court.

GENTLEMEN—Pursuant to the 3d section of the 4th Article of the Constitution of this State, I hereby request your opinion on the following questions, to wit:

1st. Can a Convention of the members of the Senate and House of Representatives be constitutionally formed for supplying deficiencies in the Senate, without the concurrence of the two branches of the Legislature?

2d. Can such a Convention, formed without the concurrence of the Senate, and which does not contain a majority of such Senators as are elected, proceed to supply deficiencies, before the Senate has

ascertained the deficiencies that exist in the Senate, and designated the constitutional candidates to supply said deficiencies—and can any other body under the Constitution, other than the Senate, designate the constitutional candidates to supply such deficiencies?

JOSHUA HALL, *President of the Senate, exercising the office of Governor.*

Council Chamber, February 5, 1830.

[After the federal eight obtained an ascendancy in the Senate, by the absence of President Hall to officiate as Governor, they voted to expunge from the records of the Senate, the order passed on the 2d February. But Justices Weston and Parris replied to that order, as well as to the interrogatories of Mr. Hall, and C. J. Mellen replied to the latter. Their answers were as follows:]

To the Hon. Joshua Hall, President of the Senate, exercising the office of Governor.

To the questions contained in your letter of the 5th instant, the following opinion is hereby given by way of answer.

The 5th section of the 3d article of the Constitution provides that *the Senate* "shall on the said first Wednesday of January, determine who are elected by a majority of the votes, to be Senators in each district: and in case the full number of Senators to be elected from each district shall not have been so elected, the members of the House of Representatives, and *such Senators as shall have been elected*, shall," &c. &c.

There are two modes of determining who are elected Senators; the one is by inspection of the returns of votes, the other is by a decision of the Senate. Cases may occur, in which both modes cannot, before vacancies are filled, be adopted.

The section in question, seems to contemplate *a Senate* and its acts: it seems also to contemplate merely *a number of Senators;* and that number may not amount to a *constitutional majority* for the transaction of business. An attention to this distinction may reconcile any supposed difficulties in the construction of the provisions of the section.

A Senate cannot exist for the purpose of doing business, unless composed of eleven Senators at least: and such Senate can act only by vote, and decide only by the power of a major vote of the constitutional quorum.

But in case a *less number* of Senators than such quorum shall appear *by the returns* to have been elected, though they cannot form a Senate for the transaction of business, still they have a right, by a part of the above section, to join in the convention formed for supplying vacancies. The expression is, "The members of the House of Representatives, and such Senators as shall have been elected, shall," &c.

When a *quorum* or more are elected, they are required, as *a Senate*, to do certain acts, particularly specified, preparatory to the formation of a Convention for supplying vacancies; but when a number *less* than a quorum are chosen, they have no constitutional authority to do those preparatory acts: but, as before observed,

they will have a right to vote in convention in virtue of the evidence of the returns and without any other evidence, or any preparatory proceedings on their part. This view of the provisions of the section seems not only justified, but required, in order that the rights of all concerned may be preserved. It also leads to a more satisfactory opinion on the points presented for decision.

All three of the questions proposed, are predicated on the fact of an *existing Senate*, clothed with power to act as a distinct branch of the government, and being a constitutional Senate, it is their duty "to determine who are elected by a majority of votes to be Senators in each district," before a convention of the two Houses can be formed for supplying vacancies.

This opinion, thus expressed, is considered and intended as a negative answer to each of the questions proposed.

The foregoing opinion must, of course, be considered as founded exclusively on the points raised by the proposed questions.

PRENTISS MELLEN, *Chief Justice.*

Portland, February 10, 1830.

To the Hon. Joshua Hall, President of the Senate, &c. &c.

The undersigned having considered the questions proposed to him as a Justice of the Supreme Judicial Court by the Senate on the 2d instant, as appears by an order certified by their President and Secretary, and also by yourself as President of the Senate, exercising the office of Governor, on the 5th inst. replies, that the constitution has pointed out the mode in which the Senate shall be filled in case the full number of Senators shall not have been elected by the people. In such case the Members of the House of Representatives with such Senators as shall have been elected are by joint ballot to elect the number of Senators required. It must therefore be first ascertained whether the full number has, or has not been elected by the people, or in other words whether there be any deficiencies, before measures can be taken to supply such deficiencies. The constitution has also pointed out the mode by which this fact shall be ascertained. The Senate, under the 4th Article, part 3, section 3, is the sole judge of the elections and qualifications of its own members, and under the 5th section of the same Article, part 2, the Senate is required to "determine who are elected, by a majority of votes, to be Senators in each District," and upon this determination may arise the contingency upon which the power and duty of supplying deficiencies devolve upon the members of the House of Representatives and the Senators elect. If the Senate is the sole "judge of the elections and qualifications of its own members" how can it be ascertained whether "the full number of Senators has or has not been elected" except on the adjudication of that body in which is vested the exclusive power of adjudicating

The validity of the elections may depend upon various facts, such as the orderly conducting the primary meetings in the several towns in each Senatorial District, the qualifications of those who voted, the eligibility of the candidate having a majority of votes, and the legality of the returns. All these are facts open to controversy, susceptible of proof, and upon which, by the Constitution, a decision seems to have been contemplated as necessarily preliminary to as-

certaining the deficiencies. The Constitution has, indeed provided that the Governor and Council, shall *examine the returns* of votes, and summon such as *appear* to be elected, to attend and take their seats. But this examination is merely for the purpose of providing for the organization of the Government by the attendance of such persons, as from the *inspection of the returns* appear to have been elected. The Governor and Council never presumed upon an enquiry into the *validity of a Senatorial election*, nor could such an enquiry, were it to be instituted by that body, have any binding effect. On the contrary, it is not very unusual for the decision of the Governor and Council, even upon the legality of the returns, to be overruled by the Senate, upon a re-examination. Such was the fact in the first legislature of this State, where the officer authorized to examine the returns declared a deficiency, and the Senate upon a re-examination of the same returns decided that there was an election by the people, and that no deficiency existed; and the undersigned believes (although he has now no opportunity to resort to the record) that at a still later period there will be found a case where the Governor and Council declared an election and summoned the member, but the Senate overruled the decision and declared the sitting member not to have been duly elected, and the deficiency was supplied in the manner pointed out in the Constitution. From the language of the constitution and from the practice under it by every Legislature since this Government was organized, the undersigned cannot doubt, that when a quorum of the Senate has been elected by the people, and the Senate has been duly organized as a co-ordinate branch of the Legislative Department, that branch has the exclusive power of determining whether the full number of Senators has or has not been elected by the people, and of course to declare deficiencies if any exist, and from the returns, (which are under its exclusive control) to ascertain and determine who are constitutional candidates from whom the deficiencies are to be supplied. Were it necessary to support this opinion by authority, the uniform practice of the Legislature of Massachusetts, under provisions in their constitution similar to ours for a period of about forty years previous to our separation from that Commonwealth, the insertion of similar provisions in our constitution, without alteration, and the practice by every Legislature of this State, under those provisions, all unite in indicating the true meaning of that portion of the instrument upon which we are now called to give a construction. So in relation to the transaction of business to be done in joint convention of the two Houses or the members thereof; established usage has confirmed, as correct, what would seem to be the necessary and only mode of accomplishing such business, by a convention formed by the concurrence of the two Houses or a majority of the members thereof. If a convention formed without the consent of both Houses, or a majority of the members of each, could legally and constitutionally do those acts required to be done by joint ballot, the Legislature might exhibit the singular anomoly of two conventions sitting at the same time to accomplish the same business, each formed of a majority of one of the branches and a minority of the other. The undersigned is therefore of opinion that deficiencies in the Senate cannot be supplied until such deficiencies have been ascertained by the Senate, if that branch of

the Legislature has been duly organized, and that the constitutional candidates to supply such deficiencies must be ascertained by the Senate from an examination of the returns, of the legality of which, that body is by the Constitution the sole and exclusive judge.

ALBION K. PARRIS, *Just. Sup. Judicial Court.*

Portland, February 8, 1830.

Augusta, February 4, 1830.

To the Hon. the Senate of the State of Maine.

The undersigned, a Justice of the Supreme Judicial Court, has taken into consideration the questions propounded by an order of the Senate, passed on the second instant.

The Constitution of the State, article fourth, part second, section third, has made each house the judge of the elections and qualifications of its own members. By article fourth, part second, section fifth, it is made the duty of the Senate, on the first Wednesday of January annually, to determine who are elected by a majority of votes to be Senators in each district. Upon this determination vacancies, if any are found to exist, are to be supplied in the manner provided in the same section. The Senators elected and the members of the House, in supplying vacancies, are required to choose from the highest number of the persons voted for, equal to twice the number of Senators deficient, on the lists returned, in each district. It may, and the undersigned thinks must, be considered as incident to their power to determine the election of their own members to determine also, where there has been no election by the people, who are the constitutional candidates, from whom the deficiencies are to be supplied. And it is believed the usage, both in this State and Massachusetts, where vacancies in the Senate are supplied in the same manner, is in accordance with this opinion. The Constitution delegates and distributes to the several departments of government their respective powers, and determines generally in what manner they shall be exercised. Where the Constitution is silent, much depends on precedent and usage, which is generally respected, and would not it is presumed be lightly or unnecessarily changed. A convention of the Senate and House of Representatives, is formed by concert between the two Houses. Official comity, and the orderly conduct of business requires this. Probably no precedent can be found either in this State, or in that from which we have separated, of a convention of the two Houses being formed, without such concert. These intimations would not, it is believed, in ordinary cases, be controverted.

There may arise, and there have arisen, in the history of States, extraordinary periods, when the course prescribed by usage and the fundamental laws, either cannot be, or is not, pursued. What remedy shall in such cases be applied, to prevent a dissolution of the government, or to bring its powers into action, it cannot belong to those, whose duty it is to interpret existing laws, to determine.

I have the honor to be, very respectfully,
your obedient servant.

NATHAN WESTON, Jun.

(C.)

[Mr. Cutler, as Acting Governor, and the Council also, submitted the point stated to counsel, on pages 90 and 94, and the answers to each are embraced in the following.]

CAMBRIDGE, JAN'Y. 30, 1830.

To the Honorable Council of the State of Maine.

Yesterday morning, my arrival in this town, I received from the Secretary of State a copy of your order or resolve of the 25th instant, requiring the opinion of the Justices of the Supreme Judicial Court on certain questions stated in said order. As the Secretary was directed to furnish *each* of said Justices with a copy of the same, it may at least be inferred that the Council did not expect that a *personal* interview and consultation should be had by the members of the Court, distant as they now are from each other. On this presumption, and to avoid delay, I have concluded to state to the Hon. Council the opinion I have formed, upon the question submitted, and to give notice of my having so done, to my brethren, without loss of time, requesting them, if they think proper, to adopt a similar mode of proceeding.

1. The constitution provides that the Senate shall choose their President; and he is always one of the Senators.

2. A Senator, as well as a Representative is elected "*for one year* from the day next preceding the last annual meeting of the Legislature."

3. A Senator, of course, when such year has expired, loses *that character*, on which the office of President of the Senate depends as its necessary foundation: hence both offices by lapse of time expire at the same moment, unless that of *President of the Senate* is otherwise terminated during the continuance of the office of Senator.

4. When a new *President of the Senate* is elected and has entered on the duties of his office, after the expiration of the year or term for which the next preceding President was elected, such election must be considered as having been made *because* no President was then in office.

5. There cannot be *two Presidents of the Senate*, at the same time, when there is only *one Senate* in existence.

6. The 11th Sect. of the 2d Art. of the Constitution provides that "Whenever the office of Governor shall become vacant by death, resignation, removal from office, or otherwise, the *President of the Senate* shall exercise the office of Governor, until another Governor shall be duly qualified." This officer he is to exercise *because* he *is* President of the Senate, and in virtue of his character *as such* officer, at the time of such exercise of the office: and not because *he had been* President during the year next preceding.

7. Unless this construction is adopted, there may be confusion in the administration of government: for if there may be, consistently with the constitution, *two* Presidents of the Senate at the same time, to whom shall the language of the article and section before cited apply? *both* Presidents are not intended; the provision contemplates but *one*, as in existence. A construction of the Constitution leading to such consequences and involving such inconsistencies, I can-

not consider as legitimate and correct; or, as ever contemplated by those who framed the Constitution.

In compliance with the order of the Hon. Council, I give it as my decided opinion that "when the Office of Governor has become vacant, and the power and duties of that office have devolved upon and been exercised by the President of the Senate until the first Wednesday in January, terminating a political year, and until another President of the Senate has been chosen and has taken upon himself that office," the office of Governor cannot be *further* exercised according to the provisions of the constitution by such *first* named President of the Senate: but said office of Governor ought to be *then* exercised by said *last* named President of the Senate while he holds that station, and until another Governor shall have been duly qualified. This opinion is respectfully submitted to the Council in answer to the questions proposed in the beforementioned order or resolve by

PRENTISS MELLEN,
Chief Justice of the S. J. Court of the State of Maine.

To the Hon. Nathan Cutler,
and the Hon. Council of the State of Maine.

The undersigned having considered the questions propounded to him as one of the Justices of the Supreme Judicial Court, on the 23d ult by the said Cutler, as "President of the Senate of 1829 and acting Governor," and on the 25th ult. by the Council by their resolve of that date, replies, that he concurs with the Chief Justice in most of the reasons by him given, in his answer of the 30th ult. to the questions propounded by the Council as aforesaid, and which it is unnecessary here to recapitulate, but would add that inasmuch as the question itself implies doubt as to the construction of a portion of the constitution, it may be useful to recur to the legal rules of construction applicable in such cases. It is a well established principle of law, that such construction ought to be put upon a statute as may best answer the intention which the makers had in view, and that, whenever any words are doubtful, the intention of the Legislature is to be resorted to, in order to find the meaning of such words. To ascertain this intention, it is often necessary to consider the other parts of the statute, for the words and meaning of one part frequently lead to the sense of the other. So, in the construction of the Constitution, which may be considered as a paramount statute passed immediately by the people, binding upon all the departments of the Government, and not subject to the power of either, the same rule of construction may be applied. The meaning of the paragraph in the 14th section of the first part of the fifth article of the Constitution, in these words "The President of the Senate shall exercise the office of Governor until another Governor shall be duly qualified," may be considered doubtful. It is doing no violence to the language to consider it as referring to the officer for the time being, so that whoever should be invested with the office of President of the Senate, at any time, during the vacancy, should, during the time of his holding such office, the vacancy still continuing, exercise the office of Governor; or it may be considered as applying to the *individual* holding the office of President of the Senate, at the time the vacancy of Governor occurred, and entitling him to exercise the office of Governor during the existence of the

vacancy, even beyond the political year in which it occurred. The language being susceptible of different constructions, the inquiry is, which will best comport with the object and intent of the instrument and the spirit of the whole. It was manifestly the intention of the framers of the Constitution that the people should be *annually* invested with all the powers by them conferred on the Executive and Legislative Departments of the Government, and that the only right to exercise those powers should be *annually* derived from the people. It is therefore provided that the Governor shall hold his office *one year* from the first Wednesday of January in each year, and that the Senators and Representatives shall be elected for *one* year only. Suppose that subsequent to the election of a Governor, but previous to taking the requisite oaths, the Governor elect should die (as was the case in Massachusetts during our connexion with that Commonwealth) or should decline accepting, the office of Governor the preceding year having been vacant and exercised by the President of the Senate. I am not aware that the Constitution has provided any mode by which such vacancy can be filled by election, either by the people or the Legislature. The office must then remain vacant during the year, and it would be doing no violence to the language of the Constitution to say that the President of the Senate of the preceding year should and continue to exercise the office of Governor for the current year, and so from year to year "until another Governor shall be duly qualified," it certainly would not comport with the spirit of that portion of the instrument which provides for an *annual* Executive, and it does not seem to me that those who framed and those who ratified that instrument could ever have intended to let such a result should by possibility occur. Other cases might be put which would be equally illustrative of the effects of such a construction. It surely would not be contended that the Governor of the preceding year should hold over, in case the Governor elect should decline accepting, or die before taking the oaths, or in case the office of Governor should not be filled in the manner pointed out by the constitution by reason of any other casualty, because that instrument has most manifestly provided otherwise. But if those who framed it had intended that the President of the preceding Senate, exercising the office of Governor, should hold over in case of a vacancy of Governor the succeeding year, would they not have provided also that the Governor for the preceding year, holding his office to the end of the political year, should hold over, in case of vacancy the succeeding year. What reason could be given for authorizing the President of the Senate, exercising the office of Governor, to hold over, and not authorizing the Governor himself to hold over under circumstances precisely similar. Every argument arising from the inconvenience of withdrawing the President of the existing Senate, from his appropriate duties at that board, or from the apprehension of anarchy in case no presiding officers should be elected in either branch of the new legislature, would apply with equal force in the one case as in the other, and to my mind the inference is strong that it was never intended that there should be any holding over in either case. By construing the words "The President of the Senate shall exercise the office," &c. to mean the President of the Senate *for the time being*, no violence is done to the language, the difficulties above suggested and others that might be enumerated, are obviated, the principles upon which the executive department is predicated, are preserved, and the executive power, in every contingency, will then annually revert to the people, and will be exercised by an officer holding his place under a new election, whether that officer be denominated Governor, President of the Senate, or Speaker of the House. It is manifest that some clauses in the constitution will not bear a strict, literal construction, for instance, the term of office of the Governor is one year from the first Wednesday of January. In many cases that period would have been fully completed a number of days previous to the first Wednesday of January of the succeeding year, and unless by construing the phraseology to mean a political year, such a construction could be given as would extend the term of office to include the first Wednesday of the succeeding January, the oath of qualification could not be administered by the Governor to the members elect of the two branches of the legislature. So in the case of Councillors who are to be chosen annually, on the first Wednesday of January, if practicable, for the purpose of advising the Governor for that political year. Unless such a construction could be given as would authorize the Councillors of the preceding year to assist in administering the oath of qualification to members of the legislature subsequent to the first Wednesday of January, those Senators who should be elected by the two branches to supply vacancies, could not be qualified until

after the election of a new Council, and of course could have no vote in such election, manifestly against the spirit of the 4th sect. of the 9th art. of the constitution. Under a belief that such a construction was warranted, by the obvious intention of the framers of the constitution as indicated in other parts of that instrument a portion of the old Council were notified by the Governor to remain, until a quorum of the new could be qualified; but there never was any attempt to transact executive business of any kind, by either Governor or Council, subsequent to the day preceding the first Wednesday of January, until a qualification under a new election; all business of every kind being suspended, except merely to administer the qualifying oaths to the members of the legislature. So in case of vacancy in the office of Governor, the President of the Senate of the preceding political year, whose term of service as Senator expires with the year, must from necessity act as Governor, and the Council of the preceding year continue to act as such, under the like necessity as above stated, in qualifying the new legislature, but the *necessity* ceases upon the election of a President of the new Senate, an officer then being in the full exercise of the office upon which according to the provision of the constitution, the duties of Governor devolve in case of vacancy.

Upon every view of this subject which I have been able to take, my mind has come irresistibly to the conclusion that the executive duties of the State when constitutionally exercised by the President of the Senate, devolve at the end of the political year when so exercised, on the President of the Senate of the next political year, the office of Governor for that year being vacant.

ALBION K. PARRIS, *Just. Sup. Jud. Court.*

Portland, Feb. 1, 1839.

AUGUSTA, January 30, 1830.

To the Hon. Nathan Cutler, acting Governor of the State:

SIR.—The undersigned, a Justice of the Supreme Judicial Court, having taken into consideration the questions propounded by the acting Governor, would in reply state that when the executive duties devolve upon the President of the Senate, in virtue of the fourth section of the first part of the fifth article of the constitution, he has the power and authority of Governor, until another Governor shall be duly qualified. It might be urged, inasmuch as he is called to supply the vacancy in the executive department, in consequence of his official character as President of the Senate, that upon the determination of the latter by lapse of time, the former would cease also. The undersigned, however, is of opinion that, upon a just construction of the section before stated, in connection with other parts of the constitution, his right and authority to exercise the office is not thus limited. By the express provisions of the constitution, the members of the Senate and of the House of Representatives are elected for one year, from the day next preceding the annual meeting of the legislature. After the expiration of that period, there is no President of the Senate, until one shall have been chosen by a new Senate, convened in virtue of a new election. By the first section of the ninth article, it is declared that every person elected or appointed to any place or office provided in the constitution, before he enters on the discharge of the duties of his office, shall take and subscribe the oaths or affirmations therein prescribed. And it is in the same section further provided, that such oaths or affirmations shall be taken and subscribed by the Senators and Representatives before the Governor and Council. Unless there is some body of the meeting of the legislature, and before either house can proceed to elect a presiding officer, some person exercising the office of Governor, this essential and important provision of the constitution cannot be carried into effect. When, therefore, the office of Governor becomes vacant, and its duties are exercised by the President of the Senate, those duties must from the necessity of the case, and by the plain intendment of the constitution, be continued until the members of the new legislature are qualified. It results then that the person designated by the constitution to supply the vacancy in the office of Governor, may and must discharge its duties beyond the period for which he was elected to the office, in virtue of which he was thus designated. If he may exercise the office of Governor on the day of the annual meeting of the legislature, when he is no longer President of the Senate, which the undersigned thinks cannot be doubted, the question returns, when does his authority in the executive department terminate? The constitution has in distinct terms answered that question, when "another Governor shall be duly qualified," this must necessarily be subsequent to the election of a new President of the Senate, because it is before him that the Governor is required to take and subscribe the oaths or affirmations prescribed by the constitution, if able to attend before the recess of the legisla-

[illegible] When [illegible] ... shall be [illegible] ... chosen. [illegible] ... office [illegible] ... It does [illegible] ... Governor [illegible] ... State [illegible] ... another Governor of the State [illegible] ... be qualified.

[illegible]

Your [illegible], NATHAN WESTON, JR.

(D.)

Questions proposed [illegible] to the Justices of the Supreme [illegible]

QUESTIONS. [illegible] ... "the Senate" ... [illegible] ... twenty [illegible] ... with power [illegible] ... in each dis[illegible] ... Senate." [illegible] words, [illegible] ... Senate [illegible] ... by a convention of [illegible] ... House of Representatives [illegible] ... Senators as shall be [illegible]

2. [illegible] ... the office of Governor is vacant, [illegible] to be [illegible] ... to preside and vote at the [illegible]

3. [illegible] of the Senate [illegible] ... are the acts of the [illegible] ... as void acts of the [illegible] ... a vote [illegible]

[illegible] Senate, [illegible] ... to be duly elected by [illegible] ... other way than by a vote of [illegible]

[illegible] facts, are Messrs. Appleton, Bodwell, Usher, [illegible] ... retain their seat.

CAMBRIDGE, Feb. 15, 1830.

To [illegible] Governor of M[illegible]

[illegible] the 13th inst. addressed to the Justices of [illegible] ... this forenoon. I have examined the [illegible] ... as my present situation affords, and [illegible] ... answering the several questions you [illegible] ... which, some allusion to a [illegible] ... grounds of my opinion.

[illegible] ... than twenty Senators [illegible] ... declares that a majority of [illegible] ... that is, such business [illegible] ... the term is used in [illegible] ... are certainly em[illegible] ... your communication.

As to the *second* question my opinion is, that while the President of the Senate, in virtue of his office, as such is clothed with the power of exercising the office of Governor, he has no right to preside over the Senate or vote as a member of that body.

As to the *third* question, I would respectfully observe that it is one which seems to me to be more proper for the Senate than for the Judiciary to decide. It may, and probably does in some measure depend on the rules and regulations of the Senate, as a deliberative body, with which the Court are not acquainted. But in further reply to this question, as the facts out of which it grows are presented also for consideration, I deem it proper to remark, that it appears from them that the question on which the President of the Senate voted on the second of February, was merely a *question of adjournment*: a question which had not, and could not have any effect or influence as it respects the constitutionality or unconstitutionality of the convention on that day for the purpose of supplying vacancies in the Senate.

As to the *fourth* question, my opinion is that a member of the Senate who has been *duly elected* and *declared* so to have been by the *proper tribunal* cannot be deprived of his seat in any other way than by a vote of expulsion, two thirds concurring. But the Court have already decided, that the Convention, by the major vote of which the *four persons*, whose claims are in question, were chosen as Senators, was not constitutionally formed, or in other words, in reply to the questions proposed to them, they have decided that a convention of the Senate and House of Representatives could not be constitutionally formed for the purpose of supplying deficiencies in the Senate, without a concurrence of the two branches; and that a convention, formed without such concurrence, and before certain preparatory proceedings were had by the Senate, could not constitutionally proceed to fill vacancies.

I do not perceive by the statement of facts beforementioned, that any vote of concurrence was passed by the Senate as to forming the Convention; or that, before it was formed in the manner stated, any vote had been taken, ascertaining the deficiencies that existed, but only that the Senate refused to accept a report of a committee as to the choice of two Senators in the county of York. The Constitution has provided only two modes in which Senators can be elected —one by the qualified voters of the Districts for which they are respectively chosen—the other by a Constitutional Convention of the two branches. It is true, the Senate are authorized and directed to examine the returns, to ascertain who are elected: and in so doing they may in many cases settle the question and arrive at conclusions different from those drawn by the Governor and Council from an inspection of the returns of votes; but still, in this process *they* do not *elect* Senators, but only ascertain and decide whom the *qualified voters* have *elected*. But they cannot by their votes or proceedings give validity to an election of Senators by a Convention unconstitutionally formed, and clothe them with the qualifications, rights and powers of Senators constitutionally chosen. To remove doubts, as far as in my power, I have perhaps, given a broader answer than was necessary; but I hope it may not prove unprofitable.

From the facts now before me, I perceive no sufficient reason for giving an opinion respecting the unconstitutionality of the Convention, different from that which the Court have recently given. The result is plain that the four persons were unduly elected by the Convention, and by that election acquired none of the rights of Senators.

As to the *fifth* question, it seems clear to my mind, that according to the view I have taken of the subject, the Senate is the only tribunal constitutionally authorised to decide it. The returns of votes are before them, subject to their examination; and their decision upon them, and their consequent proceedings will, of course, be in accordance with the Constitution, as understood and construed by the Court in their opinion delivered in answer to your questions, in connection with their former opinion respecting the constitutionality of the Convention and its proceedings.

All which is respectfully submitted.

PRENTISS MELLEN, *Chief Justice of S. J. C.*

The undersigned concur in the foregoing opinion.

NATHAN WESTON, Jun'r.
A. K. PARRIS.

ERRATUM.—Page 81, ten lines from the bottom, for *to whom* read *whereas*.

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